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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

MELITA MEYER, SAMANTHA
RODRIGUEZ, and COURTNEY BARRETT,
individually, and on behalf of all others
similarly situated,

Plaintiffs,

v.

BEBE STORES, INC.

Defendant.

Case No. 4:14-cv-00267-YGR

**DECLARATION OF RANDALL A.
SNYDER**

Judge: Hon. Yvonne Gonzales Rogers

DECLARATION OF RANDALL A. SNYDER

I, Randall A. Snyder, hereby declare as follows:

1. My name is Randall A. Snyder. I am an adult over the age of 18 and a resident of the state of Nevada. I have personal knowledge of each of the matters stated herein, and if called to testify I could and would testify competently about them.

1 2. I am an independent telecommunications technology consultant and reside
2 at 8113 Bay Pines Avenue, Las Vegas, Nevada, 89128. I have been retained by Mazie Slater
3 Katz & Freeman, LLC in the matter *Meyer et al. v. Bebe Stores, Inc.*, 4:14-cv-00267-YGR (N.D.
4 Cal.) to provide my expert opinions relating to mobile marketing technology utilized by
5 Defendant bebe Stores, Inc. (“Defendant” or “bebe”). In particular, I have been asked to
6 determine whether the Defendant operated equipment which has the capacity to store or produce
7 telephone numbers to be called, using a random or sequential number generator, or from a list or
8 database of numbers, and whether the Defendant operated equipment which has the capacity to
9 dial telephone numbers without human intervention. Moreover, I have been asked to provide my
10 opinions regarding whether there is a viable method to determine which telephone numbers
11 contained within Defendant’s database would have been sent a text message.
12

13 3. My opinions in this declaration are based on my knowledge, education,
14 experience, expertise, training and my review of the following documents in this case: Plaintiffs’
15 Consolidated Complaint for Damages and Injunctive Plaintiffs’ First Amended Consolidated
16 Complaint for Damages and Injunctive Relief Pursuant to the Telephone Consumer Protection
17 Act, 47 U.S.C. §§ 227 et seq.; Federal Communications Commission Petition for Expedited
18 Declaratory Ruling on Autodialer Issue (*Fried v. Sensia Salon, Inc.*); Declaration of Erik Lautier
19 in Support of Motion to Stay Litigation to Permit FCC to Rule on Recently Filed Petition;
20 Supplemental Responses of Defendant Bebe Stores, Inc. to Plaintiff’s Request for Admissions;
21 Memorandum of Points and Authorities in Support of Defendant’s Motion to Stay Litigation to
22 Permit FCC to Rule on Recently Filed Petition; Request for Judicial Notice in Support of
23 Defendant’s Motion to Stay Litigation to Permit FCC to Rule on Recently Filed Petition;
24 Supplemental Responses of Defendant Bebe Stores, Inc. to Plaintiff’s Request for Production
25 [Nos. 1-65]; Supplemental Responses of Defendant Bebe Stores, Inc. to Plaintiff’s Second Set of
26 Interrogatories; Plaintiff’s Memorandum of Points and Authorities in Support of Motion for
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1 Class Certification; Responses of Defendant Bebe Stores, Inc. to Plaintiff's First Set of
2 Interrogatories; Responses of Defendant Bebe Stores, Inc. to Plaintiff's Second Set of
3 Interrogatories; Declaration of Payam Shahian in Support of Plaintiffs' Motion for Class
4 Certification; Air2Web Application and Services Agreement (Bates Nos. bebe000001–
5 bebe000028); Cell Phone Capture/Text Message Program Description (Bates Nos. bebe000032–
6 bebe000040); Bebe's Customer Database Records (Bates Nos. bebe002029-bebe002030);
7 Deposition Transcript of Christiane Grando; Deposition Transcript of Angela Kourtoglou;
8 Deposition Transcript of Sheela Agarwal; Memorandum of Points and Authorities in Support of
9 Bebe Stores, Inc.'s Motion to Decertify Both Subclasses [F.R.C.P. Rule 23]; Declaration of
10 Angela Kourtoglou in Support of Bebe Stores, Inc.'s Motion to Decertify Both Subclasses
11 Pursuant to F.R.C.P. Rule 23; Memorandum of Points and Authorities in Support of Bebe Stores,
12 Inc.'s Motion to Strike and Motion for a More Definite Statement [F.R.C.P. Rule 12(E), (F)];
13 Bebe Stores, Inc.'s Objections to Plaintiffs' Proposed Trial Plan; Declaration of Amy L. Pierce
14 in Support of Bebe Stores, Inc.'s Objections to Plaintiffs' Proposed Trial Plan; Mobile Marketing
15 Association, Global Code of Conduct (dated July 15, 2008); Mobile Marketing Association, U.S.
16 Consumer Best Practices for Messaging, Version 7.0 (dated October 16, 2012); the Telephone
17 Consumer Protection Act, 47 U.S.C. § 227, *et seq.* ("TCPA") and regulations promulgated
18 thereunder; the Federal Communications Commission's ("FCC") Report and Order in the Matter
19 of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991 dated
20 October 16, 1992; the FCC's Report and Order in the Matter of Rules and Regulations
21 Implementing the Telephone Consumer Protection Act of 1991 dated July 3, 2003; the FCC's
22 Declaratory Ruling in the Matter of Rules and Regulations Implementing the Telephone
23 Consumer Protection Act of 1991 Request of ACA International for Clarification and
24 Declaratory Ruling dated January 4, 2008; the Appeal from the United States District Court for
25 the Northern District of California, No. 07-16356, D.C. No. CV-06-02893-CW Opinion, filed
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1 June 19, 2009; the FCC's Report and Order in the Matter of Rules and Regulations
2 Implementing the Telephone Consumer Protection Act of 1991 dated February 15, 2012; the
3 FCC's Notice of Proposed Rulemaking in the Matter of the Middle Class Tax Relief and Job
4 Creation Act of 2012, Establishment of a Public Safety Answering Point Do-Not-Call Registry
5 dated May 22, 2012; the FCC's Declaratory Ruling in the Matter of Rules and Regulations
6 Implementing the Telephone Consumer Protection Act of 1991, SoundBite Communications,
7 Inc. Petition for Expedited Declaratory Ruling dated November 29, 2012; the FCC's Declaratory
8 Ruling in the Matter of Rules and Regulations Implementing the Telephone Consumer Protection
9 Act of 1991 dated July 10, 2015; and the FCC Enforcement Advisory No. 2016-06 Robotext
10 Consumer Protection, Text Message Senders Must Comply With The Telephone Consumer
11 Protection Act dated November 18, 2016.
12

13 4. I have over 30 years of experience in telecommunications network and
14 system architecture, engineering, design and technology. I am an expert in the fields of both
15 wireline and wireless telecommunications networking technology. A copy of my *curriculum*
16 *vitae* is attached to this Declaration. I have been retained as a testifying or consulting expert in
17 over 135 cases regarding cellular telecommunications technology, including over 75 cases
18 regarding Short Message Service ("SMS") technology and nearly 100 cases regarding the TCPA
19 and associated regulations. In addition, I have been retained as an expert by both plaintiffs and
20 defendants in cases involving the TCPA.
21

22 5. I have taught many classes and seminars on both wireline and wireless
23 telecommunication network technologies and have been a panelist and speaker at numerous
24 conferences at the Institute of Electrical and Electronics Engineers ("IEEE"), the Personal
25 Communication Society ("PCS"), and the Cellular Telecommunications and Internet Association
26 ("CTIA") as an expert in telecommunication networks. I spent seven years developing standards
27 within the American National Standards Institute's subsidiary organization, the
28

1 Telecommunications Industry Association (“TIA”), providing technical contributions and
2 authoring and editing telecommunications proposed standards documents. Most notably, I
3 authored and oversaw the standardization of Interim Standard 93, providing interconnection
4 technology between wireline and wireless networks, which is a fully accredited national standard
5 of the American National Standards Institute (“ANSI”).

6 6. I am the co-author of the McGraw-Hill books “Mobile Telecommunications
7 Networking with IS-41,” and “Wireless Telecommunications Networking with ANSI-41, 2nd
8 edition” published in 1997 and 2001, respectively. I have been issued 26 patents myself on
9 telecommunications networking technology and currently have five additional published patents
10 pending. I have also authored several articles on telecommunications technology and have been
11 quoted numerous times in industry trade publications. I have been hired as a consultant by the
12 CTIA, as well as by many wireline and wireless telecommunications companies, including Bell
13 Laboratories, McCaw Cellular, AirTouch, AirTouch International, AT&T Wireless, AT&T
14 Mobility, Lucent, Nokia, Ericsson, Motorola, Samsung, Siemens, Nextwave, MCI, Daewoo,
15 Globalstar, T-Mobile, Sprint, U.S. Cellular, Teleglobe Canada, Teledesic and other
16 telecommunications technology vendors and service providers. I was also nominated in 2006 for
17 a National Television Arts Emmy Award for Outstanding Achievement in Advanced Media
18 Technology for unique wireless content distribution technology I designed while employed at
19 Entriq, Inc.

20 7. In addition, in 2002, I was co-founder of m-Qube, Inc., one of the first text
21 message-based mobile marketing and SMS aggregator companies in the U.S. M-Qube founded
22 and established the Mobile Marketing Association (see <http://www.mmaglobal.com>) which
23 subsequently established the technology and methodology for the use of text message based
24 short codes as well as mobile marketing guidelines and rules within North America.

25 8. Moreover, I have been issued 12 patents on SMS technology, including the
26
27
28

invention of “short code” technology, and my books have been cited in four additional patents on SMS technology. Still more detail, as well as details of publications that I have authored or co-authored within at least the past 10 years, are provided in my attached *curriculum vitae* (a true and correct copy of which is attached hereto as Exhibit A) along with a list of cases where I served as a testifying or consulting expert and my standard rate sheet. I am being compensated at the rate of \$450 per hour for my study, analysis and testimony in this case.

INTRODUCTION

9. It is my understanding that the TCPA defines an automatic telephone dialing system (“ATDS”) as “equipment which has the capacity – (i) to store or produce telephone numbers to be called, using a random or sequential number generator; and (ii) to dial such numbers.” Additionally, the Federal Communications Commission (“FCC”) has issued regulations that also define an ATDS as including the capacity to dial telephone numbers from a provided list or database of telephone numbers without human intervention.

10. Based on my review of the relevant documents and the facts described above, it is my opinion that the text messages sent to the Plaintiffs and the potential class members were sent using an ATDS as defined within the TCPA. I base this opinion on my knowledge, education, experience, expertise, training and on the evidence I have reviewed.

11. I also understand the definition of the classes in this case are as follows:

i. Post-October 16, 2013 Non-Club bebe Class:

All persons within the United States who provided their mobile telephone number to bebe in one of bebe’s stores at the point-of-sale and were sent an SMS or text message from bebe during the period of time beginning October 16, 2013 and continuing until the date the Class is certified, who were not members of Club bebe during the Class Period.

ii. Post-October 16, 2013 Club bebe Class:

All persons within the United States who provided their mobile telephone number to bebe in one of bebe’s stores at the point-of-sale and were sent

1 an SMS or text message from bebe during the period of time beginning
2 October 16, 2013 and continuing until the date the Class is certified, who
were members of Club bebe during the Class Period.

3 12. Furthermore, it is my opinion that using the Defendant's own customer
4 relationship management ("CRM") database, it can be determined which cellular telephone
5 numbers would have been sent a text message on behalf of bebe.

6 **INDUSTRY BACKGROUND**

7
8 13. The use of Short Message Service, more commonly known as "text
9 messaging" in the U.S., has become ever-present. SMS is a communications system and method
10 that was designed to enable an individual cellular telephone subscriber to send, or originate, a
11 short text message communication (typically no more than 160 characters) from his or her
12 cellular telephone to another individual subscriber's cellular telephone that is the intended
13 destination of the message, *i.e.*, the message recipient. SMS text messages are sent individually
14 from one subscriber to another using a cellular telephone number as the destination address of
15 the message. The message sender's cellular telephone number is preserved as part of the message
16 at the destination cellular telephone where the message is received so that the message recipient
17 knows the cellular telephone number of the message sender.

18
19 14. Over the past several years many companies have emerged that provide
20 what is known as value-added text messaging services using SMS technology, meaning that they
21 provide a variety of text messaging services (*i.e.*, SMS) that are not strictly peer-to-peer in the
22 sense of subscriber-to-subscriber manual communications; rather, these companies use automatic
23 computer equipment to send and receive text messages using SMS to and from individual
24 cellular telephone subscribers. These "mobile marketing" companies are external entities to the
25 cellular network carriers.

26
27 15. Mobile marketing companies are typically in the business of creating and
28

1 operating text message-based applications on behalf of other branded companies in order to
2 develop and maintain communication with cellular telephone subscribers for commercial
3 purposes. The automatic computer equipment that these mobile marketing companies utilize is
4 used for a variety of text messaging applications, marketing campaigns and dialogs on behalf of
5 the branded company to communicate with cellular subscribers. Common applications are voting
6 (the most popular example being the text message voting used to vote for contestants on the
7 *American Idol* television program) as well as receiving news alerts, informative notifications,
8 coupons and sports scores where short messages are sent to cellular subscribers on a regular
9 basis.
10

11 16. Moreover, these mobile marketing companies utilize equipment that has the
12 ability to send any number of text messages *en masse* to cellular telephone subscribers as well as
13 receive individual text messages from those subscribers, on behalf of a branded company.
14 Messages sent from the branded company, using a mobile marketing company's computerized
15 messaging platform, to a cellular subscriber are termed "mobile-terminated" and messages sent
16 from a cellular subscriber to a branded company are termed "mobile-originated."
17

18 17. Mobile marketing companies send and receive text messages by connecting
19 to the cellular carrier networks using internet-based connections and communications protocols.
20 The primary protocol used is known as the Short Message Peer-to-Peer ("SMPP") protocol.
21 SMPP is an internet-based communications protocol specifically designed for communications
22 between a mobile marketing company and a cellular network's Short Message Service Center
23 ("SMSC"). SMSCs are network entities that are maintained and controlled within the cellular
24 carriers' networks and are the store and forward repositories for text messages to be both
25 delivered to and sent from mobile subscribers.
26

27 18. Mobile marketing companies' connections to the cellular network operators
28 are internet connections and typically use a special number as the address by which cellular text

1 messages are sent and received in order to communicate with cellular subscribers. All messages
2 sent to a particular subscriber are delivered to that subscriber's "home" SMSC within the
3 subscriber's home cellular network. Since mobile marketing companies are not cellular
4 subscribers, they are not identified by a mobile telephone number; rather, they use a special
5 number as an originating address for text messages sent to cellular subscribers. This number is
6 known as a "short code." A short code is a special and unique 5- or 6-digit number that is
7 obtained from an independent agency, ©Telcordia Technologies, Inc. dba "iconnectiv."¹ that
8 manages and assigns these number resources in the United States. Prior to 2016, Neustar, Inc.
9 was the agency that managed and assigned these short code resources.
10

11 19. Individual short code numbers are either leased by the mobile marketing
12 companies on behalf of the branded companies for which a text messaging application is being
13 run or they can be leased by the branded companies themselves and provided to the mobile
14 marketing companies. In either case, the mobile marketing companies subsequently request that
15 these numbers be provisioned (*i.e.*, programmatically stored) by the cellular network operators so
16 that mobile-originated messages can be properly sent from cellular subscribers to the correct
17 mobile marketing company platform applications. In this case, the cellular network operators
18 approve the service application that uses an individual short code before it is provisioned in their
19 networks. The process requires that the mobile marketing company draft and submit a detailed
20 written description of the service application that uses the short code. The detailed description
21 typically contains a representation of the text content of messages that are to be sent to and
22 received from cellular subscribers, the precise "opt-in" method to be used by cellular telephone
23 subscribers, the anticipated number of cellular telephone subscribers expected to be involved in
24 the application communication, the anticipated number of text messages expected to be sent and
25 received in the application communication, when the application will start and end, how the
26
27
28

¹See <https://www.usshortcodes.com/info/>.

1 subscriber can “opt-out” of the program along with other details.

2 20. In many cases, mobile marketing companies do not connect directly to the
3 cellular carrier networks (*e.g.*, Verizon Wireless or AT&T Mobility). Establishing and
4 maintaining direct connections to individual carrier networks is expensive, time consuming and
5 technically difficult. Because of business and technical barriers, mobile marketing companies
6 sometimes connect indirectly to the carrier networks through intermediary companies known as
7 SMS aggregators. These SMS aggregators are in the business of connecting to multiple cellular
8 carrier networks and reselling that connectivity to mobile marketing companies.
9

10 21. Aggregation of multiple cellular carrier network connections into a single
11 connection to a mobile marketing company is highly advantageous. First, it enables a mobile
12 marketing company to send and receive text messages to and from cellular telephone subscribers
13 quickly and easily. Second, it enables the mobile marketing company to send and receive text
14 messages to and from all mobile subscribers in the U.S. at once, regardless of which cellular
15 carrier serves them. And third, SMS aggregators can ensure that any short codes used to access
16 SMS applications are provisioned on all the cellular carrier networks.
17

18 22. Mobile marketers typically provide a software-based application
19 programming interface (“API”) that can be used by their branded company clients to develop a
20 software application that connects to their message delivery platform for that application. An
21 API is essentially a programmatic method of communication between two computer systems.
22 The API can be used as part of a software application created by the branded company to access
23 the message delivery platform or it can be an online portal accessible by the branded company
24 via a web-based user interface (“UI”). These software methods enable a branded company to
25 create a message template for the content that will appear in the body of the text messages and
26 then upload, or otherwise choose, a list of cellular telephone numbers for which the text
27 messages are to be sent. The message template is essentially a prerecorded text message body
28

1 that is stored within the mobile marketing application system. The mobile marketing application
2 system automates the process of repeatedly copying and constructing individual text messages
3 with the prerecorded message body to be sent *en masse* as mobile-terminated text messages to
4 the previously provided and stored cellular telephone numbers.

5 23. Note that there are many companies that provide both mobile marketing and
6 SMS aggregation services to external branded companies.

7 24. Based on my review of the materials and documentation provided to me in
8 this case, Air2Web, Inc. ("Air2Web") was the mobile marketing and SMS aggregation company
9 employed by the Defendant to automatically transmit cellular text messages *en masse* using the
10 short code "42323." Air2Web was acquired by Velti PLC in September, 2011 and its mobile
11 marketing product was subsequently known as the "mGage" platform. (Exhibit B.) Air2Web
12 operates an automatic computer equipment system providing SMS-based services that enable
13 text message communications between the automatic system and cellular telephone subscribers.
14 The messaging services that Air2Web enables is used to form a commercial relationship with
15 cellular subscribers and to use the cellular networks and text messaging technology to form that
16 relationship. (Exhibit C.)

17 25. Air2Web is a company that provides mobile marketing and text messaging
18 services to branded companies such as bebe. Based on my knowledge, education, experience,
19 expertise, training and my review of the materials and documentation provided to me in this
20 case, Air2Web is a mobile marketing and SMS aggregation company. As such, it operates an
21 automatic computer equipment system providing SMS-based applications that enable text
22 message communications between those applications that are run on the system and cellular
23 telephone subscribers. The promotional marketing application that Air2Web developed and
24 maintained was used to form a commercial relationship with cellular subscribers and to use the
25 cellular networks and text messaging technology to form that relationship.

OPT-IN

1
2 26. “Opting-in” is a term that describes a method by which a cellular subscriber
3 explicitly and expressly provides individual consent to inform a mobile marketing company that
4 they are willing to receive text messages for a specific text message application or campaign. In
5 my experience, consent is not broadly given for multiple commercial text message applications
6 nor is it given in some “open-ended” fashion (*i.e.*, without limitation) such that a cellular
7 subscriber “opts-in” to receive any and all text messages in perpetuity.

8
9 27. There are two reasons why express and formal “opt-in” techniques are used
10 for automatic commercial text messaging applications: (i) to enable cellular telephone
11 subscribers to reliably provide knowing, voluntary, clear, unmistakable, explicit and express
12 consent for a particular commercial text messaging program; and (ii) to inform the mobile
13 marketing company that they are willing to incur appropriate text messaging charges for that
14 application program.

15
16 28. The “opt-in” method requiring a “mobile-originated” text message to be sent
17 by a cellular subscriber as a response to some “call-to-action” is a very reliable means for the
18 mobile marketing company to obtain express and knowing consent to send application text
19 messages to a cellular subscriber. For a given application or text message campaign, this call-to-
20 action can be a commercial advertisement from a website, television, radio, newspaper,
21 magazine, billboard, etc. For instance, the actual call-to-action is usually a read or heard message
22 indicating that the cellular subscriber can send a text message to a particular numeric address
23 along with a keyword or words that make up the body of the message. The cellular subscriber
24 uses this mobile-originated text message that is sent to the mobile marketing company to “opt-
25 in” to the desired application service (such as to receive regular sports updates or to vote for an
26 American Idol contestant).

27
28 29. The call-to-action requires that consumers respond by executing the initial

1 cellular communication first so they can unmistakably and voluntarily provide express consent.
2 Using this method, cellular subscribers must use their own cellular telephones to respond to a
3 given text message application and the response text message automatically contains the cellular
4 telephone number of the cellular subscriber. This provides a very reliable express means for the
5 mobile marketing company to ensure that the cellular subscriber responding to the call-to-action
6 is, in fact, the authorized cellular subscriber who wishes to receive text messages for that
7 application.
8

9 30. When a cellular subscriber responds to a branded text messaging application
10 using a short code address along with a keyword or words that make up the body of the message,
11 the mobile marketing company records and saves the cellular subscribers' telephone numbers in
12 a database or electronic list. The cellular subscriber phone numbers typically need to be saved
13 and stored in a database by the mobile marketing company for a given application or campaign
14 for a variety of reasons. The application may be based primarily on mobile-terminated messages
15 once a subscriber has "opted-in," such as sending sports scores, news, notifications, reports or
16 alerts on a regular basis, or the application may be based on an ongoing dialog between the
17 mobile marketing company and the cellular subscriber such as trivia questions and responses.
18

19 31. There are other common methods used for the "opt-in" process. Cellular
20 subscribers can provide some indication of willingness to receive mobile-terminated text
21 messages from the mobile marketing company by filling in a web-based form on an Internet
22 website or via a mobile application. This is typically the case when the crux of a specific text
23 message application or campaign is based on the mobile marketing company sending out a
24 mobile-terminated text message first, to initiate the application, campaign or dialog with the
25 cellular subscriber.
26

27 32. The "opt-in" method requiring a mobile-originated text message to be sent
28 by a cellular subscriber as a response to a "call to action" is the most reliable means of obtaining

1 consent to receive application text messages. This is because cellular subscribers must use their
2 own cellular telephones to “opt-in” to a given text message application and the “opt-in” text
3 message automatically contains the cellular telephone number of the cellular subscriber. This
4 provides a fairly reliable means for the mobile marketing company to ensure that the cellular
5 subscriber “opting-in” is, in fact, an authorized cellular subscriber that wishes to receive text
6 messages for that application. Conversely, consent provided on an Internet website form simply
7 requires the entry of a cellular telephone number as well as some indication that the user is
8 “opting-in.” This can be a dangerous mechanism as any user can enter any cellular telephone
9 number into a website form and there is no way that this user can be truly authorized, except by
10 the mobile marketing company sending a mobile-terminated text message to the cellular
11 telephone number requesting a confirmation. If the user who entered the cellular telephone
12 number is not truly the cellular subscriber, then the cellular subscriber using the telephone
13 number will receive an unknown confirmation message. In this case, the actual cellular
14 subscriber receives an unauthorized and unwanted text message and may provide no consent to
15 receive text messages; however, the damage is already done. In today’s environment, “opting-in”
16 via cellular telephone is typically preferable for text message applications as even very active
17 cellular telephone users are not used to consenting to text message services on an Internet
18 website. Also, many text message applications are specifically targeted to cellular subscribers on
19 the move, so the “call to action” engages the subscribers when they are not at or near a personal
20 computer.
21
22
23

24 33. Cellular telephone numbers supplied to the branded company by other
25 means, such as those which were provided to bebe in this case, provide no way to ensure that the
26 cellular subscriber has expressly and explicitly “opted-in” and authorized the branded company
27 to send promotional text messages. Furthermore, there is no automatic mechanism deployed that
28

1 enables cellular subscribers themselves to control the “opt-in” process and the subsequent receipt
 2 of unwanted or unsolicited commercial text messages. These unsolicited and unwanted
 3 commercial text messages are not only an annoyance to cellular subscribers, but result in
 4 improper text message charges to those subscribers. These charges can be especially harmful to
 5 pre-paid cellular subscribers as the charges are instantly deducted from their current pre-paid
 6 account balances, limiting their use of any cellular services including voice calls.

7 **THE MOBILE MARKETING ASSOCIATION (“MMA”)**

8
 9 34. The MMA is a global non-profit trade organization that issues codes of
 10 conduct and best practices for all companies engaged in mobile marketing and mobile
 11 commercial activities. As part of their function, they provide industry guidelines for commercial
 12 text messaging applications and programs. The MMA is the global authoritative organization
 13 providing best practices, guidelines, rules and instructions for all companies involved in
 14 communicating with cellular telephone subscribers using SMS-based text messaging technology.
 15 Among the goals of the MMA is to ensure that mobile marketers comply with all federal, state
 16 and local laws regarding mobile communications with consumers. The MMA’s guidelines define
 17 the “opt-in” processes that branded companies can use to properly ensure that cellular
 18 subscribers are protected from unsolicited and unwanted text message communications.
 19

20 35. Both Velti and Air2Web were members of the MMA and, in fact, in June
 21 2013, Velti released and distributed a white paper on mobile marketing data trends and best
 22 practices via the MMA website. (Exhibit D.) As MMA members, Both Velti and Air2Web were
 23 aware of the MMA’s specifications for proper mobile marketing programs.
 24

25 36. According to the MMA’s Global Code of Conduct:

26 “Mobile Marketers ask for and obtain consent by obtaining an explicit
 27 opt-in from the user for all mobile messaging programs. This can be
 28 accomplished via an SMS or MMS opt-in process, a voice response,
 website registration, other MMA recognized methods or other legitimate
 methods.”

1 “Mobile Marketers must implement consent (opt-in) for a specific
2 messaging program. Consent is not carried into other programs unless the
3 user has consented to such communications either 1) when they
consented to the initial program or 2) upon the commencement of a
subsequent messaging program.”

4 (Exhibit E, p. 1.)

5 37. Furthermore, according to the MMA’s U.S. Consumer Best Practices

6 (Exhibit F):

7 “At all times, programs must be in accordance with applicable federal
8 and state laws, rules and regulations.”

9 (Exhibit F, p. 7.)

10 “Content providers must obtain opt-in approval from subscribers before
11 sending them any SMS or MMS messages or other content from a short
12 code.”

13 (Exhibit F, p. 8.)

14 “When opt-in to a recurring program occurs via the web or other non-
15 mobile point of origination, the content provider must obtain verification
16 that the subscriber is in possession of the handset being opted-in to the
service.

17 “For recurring standard rate programs, subscribers should indicate their
18 willingness to participate in a program and receive messages from the
19 program as follows:

20 1. Subscriber initiates opt-in to a recurring Standard Rate Program
21 by responding to a call to action (CTA):

22 i.) Subscriber may send a Mobile Originated (MO) message
23 from their handset to the short code.

24 ii.) Subscriber may initiate opt-in from a web interface.

25 iii.) Subscriber may initiate opt-in from a WAP interface.

26 iv.) Subscriber may initiate opt-in from an IVR system.”

27 (Exhibit F, p. 8.)

38. In addition, the MMA provides clear best practices and instructions to enable cellular subscribers to “opt-out” of receiving any text messages from an automatic application program:

“After opt-in to a recurring program, a confirmation Mobile Terminating (MT) message must be sent to the subscriber containing, at minimum, the following information:

- a) Service description
- b) Program Sponsor
- c) Additional carrier costs (e.g. Msg&Data Rates May Apply)
- d) Frequency of messaging
- e) Customer support information (HELP)
- f) Opt-Out information (STOP)”

(Exhibit F, p. 9.)

39. “Opting-out” is a term that describes a method by which a cellular subscriber explicitly and expressly revokes individual consent to inform a mobile marketing application that they are no longer willing to receive text messages from that application for a specific text message application.

40. For “opting-out,” the MMA mandates the following instructions to mobile marketing companies:

“Content providers must offer subscribers the opportunity to cancel the service at any time. The following rules govern program opt-out:

“A subscriber must be able to stop participating and receiving messages from any program by sending STOP to the short code used for that program.

- “END, CANCEL, UNSUBSCRIBE or QUIT should also be opt-out key words for all programs; however, content providers should feature the word STOP in their advertising and messaging. Messaging content providers must process a

stop message from a subscriber regardless of the keyword STOP's case sensitivity."

(Exhibit F, p. 10.)

FACTS REGARDING PLAINTIFF MEYER

41. Plaintiff Meyer purchased a dress at one of bebe's stores. During her interaction at the transaction point-of-sale ("POS"), one of bebe's employees requested her to provide a telephone number. Sometime thereafter, on December 10, 2013, Plaintiff Meyer received the following unsolicited text message from the Defendant from the short code "42323" (a true and correct copy of which is shown in Exhibit G):

bebe: Get on the list! Reply YES to confirm opt-in. 10% OFF reg-price in-store/online. Restrictions apply. 2msg/mo, w/latest offers. Msg&data rates may apply.

42. Note that this text message received by Plaintiff Meyer provides no means to opt-out, as required by the MMA.

FACTS REGARDING PLAINTIFF BARRETT

43. Similar to Plaintiff Meyer, Plaintiff Barrett engaged in an interaction at one of Bebe's stores. During her interaction at the transaction POS on December 12, 2016, one of bebe's employees requested her to provide her cellular telephone number, which was then entered into the cellular phone field within Bebe's CRM database. (Bates Nos. bebe002029-bebe002030.) Within a few hours thereafter, Plaintiff Barrett received a similar unsolicited text message to that of Plaintiff Meyer.

FACTS REGARDING DEFENDANT BEBE

44. Bebe is a company that operates retail clothing stores marketing and selling products to the public, from both traditional brick-and-mortar stores and online via the Internet.

45. Bebe is a company that used automatic mobile text messaging to communicate various marketing and advertising information to consumers.

1 46. Bebe entered into a contract with Air2Web to enable bebe to use Air2Web's
2 automatic mobile text messaging capabilities. (Bates Nos. bebe000001–bebe000028,
3 bebe000078).

4 47. Subsequent revisions to the contract enabled Air2Web to transmit up to
5 700,000 mobile-terminated text messages per month to cellular subscribers via eight cellular
6 carriers on Bebe's behalf. (Exhibit H, Bates Nos. bebe000015, bebe000025.)

7 48. Bebe, along with Air2Web, executed and operated the "clubbebe" mobile
8 marketing text message campaign. (Exhibit I.)

9 49. Either Bebe or Air2Web leased the short code "42323" from iconnectiv to
10 operate the clubbebe mobile marketing text message campaign.

11 50. Bebe's employees collected telephone numbers of customers and potential
12 customers at the transaction POS within its retail store for the clubbebe mobile marketing
13 campaign. (Exhibit I, Bates No. bebe000036.)

14 51. The collected telephone numbers are then stored by bebe's employees in
15 bebe's CRM database. (Exhibit J, Grando Dep., 25:16-26:19; Exhibit K, Kourtoglou Dep., 25:6-
16 22.)

17 52. The collected telephone numbers in bebe's CRM database are then
18 transferred to Air2Web's automatic text messaging system using a database script. (Exhibit L,
19 Agarwal Dep., 11:21-12:8.) A script is simply a software program that is used to import data,
20 export data, access data, query data or otherwise perform data operations on a database.
21

22 53. Within a few hours of collecting customers' cellular telephone numbers at
23 the POS, at least one mobile-terminated text message was sent to those numbers. (Exhibit K,
24 46:17-47:2.)

25
26
27 **FACTS REGARDING AIR2WEB**

28 54. Air2Web was a mobile telecommunications technology company providing

1 mobile marketing and SMS aggregation services to branded companies.

2 55. Air2Web provided a web-based user interface enabling bebe to create and
3 store prerecorded text messages for the clubbebe campaign on Air2Web's automatic text
4 messaging system. (Exhibit J, 43:25-44:5.)

5 56. Air2Web's system enables bebe personnel to create prerecorded message
6 bodies to be programmatically inserted into text messages. These prerecorded message bodies
7 are subsequently and programmatically used, along with the originating short code number
8 "42323" (*i.e.*, the "from" field) and stored destination address cellular telephone numbers (*i.e.*,
9 the "to" field), to automatically create computerized text messages to be delivered to cellular
10 subscribers *en masse*.
11

12 57. It is evident that bebe used computer equipment to execute automatic text
13 message campaigns, such as the one which caused the Plaintiffs and potential class members to
14 receive the text messages at issue in this case. Furthermore, bebe obtained and stored cellular
15 telephone numbers of consumers enabling it to create automatic text message campaigns using
16 Air2Web's automatic text messaging system.
17

18 58. This equipment, used by bebe and operated by Air2Web, automatically
19 transmitted cellular text messages *en masse*. Air2Web operated an automatic computer
20 equipment system providing SMS-based services that enabled text message communications
21 between the automatic system and cellular telephone subscribers.
22

23 59. Since each mobile-terminated text message sent to the cellular subscribers
24 that engaged in the automatic text message campaign contains the short code number "42323" as
25 the originating address, they must have been sent by automatic computer equipment. Mobile-
26 terminated text messages containing a short code can only be sent by computer equipment;
27 otherwise, the originating address of the mobile-terminated text messages would appear as a
28 standard 10-digit cellular telephone number. There is no way to transmit a text message

1 manually from a cellular telephone that contains a short code number as the originating address.

2 60. There is no doubt that prerecorded text message content was entered into
3 and stored on Air2Web's automatic text messaging system. This prerecorded content was
4 automatically replicated and used to create the text messages sent *en masse* to cellular
5 subscribers. The predefined text, entered into the automatic text messaging system, was certainly
6 entered into the computer once by bebe personnel at some point prior to the initiation of the
7 automatic text message campaign; however, the replication of this content, placement of the
8 content into the body of the appropriate mobile-terminated text messages, creation of the SMS
9 communications protocol format and the transmission of the SMS messages that were sent *en*
10 *masse* occurred in a completely automatic fashion.

12 61. The telemarketing text messages automatically transmitted by Air2Web on
13 behalf of Bebe are not messages that are sent peer-to-peer by a human; rather, they are automatic
14 text messages sent *en masse* from Air2Web's computerized automatic text messaging system to
15 cellular telephone subscribers.

17 **THE TCPA, FCC AND AUTOMATIC TELEPHONE DIALING SYSTEMS**

18 62. For ease of reference, this section simply presents the TCPA definitions and
19 FCC regulations that I understand from Plaintiffs' counsel to be those most applicable to my
20 analysis in this case.

21 63. The TCPA prohibits unsolicited calls to cellular telephone numbers using an
22 "automatic telephone dialing system" ("ATDS"), which the statute defines as "equipment which
23 has the capacity— (i) to store or produce telephone numbers to be called, using a random or
24 sequential number generator; and (ii) to dial such numbers." (See *Telephone Consumer*
25 *Protection – Restrictions on use of telephone equipment* 47 U.S.C. § 227(a)(1)).

27 64. The FCC has held that prohibitions under the TCPA apply equally to both
28 voice calls and SMS text message calls to cellular telephone numbers (see *Rules and Regulations*

1 *Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278,
 2 *February 15th, 2012).*

3 65. Furthermore, the FCC recently re-affirmed this interpretation in *Rules and*
 4 *Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-
 5 278, WC Docket No. 07-135, July 10, 2015:

6 “Text messages are “calls” subject to the TCPA, as previously determined by the
 7 Commission.” (p. 5.)

8 66. In addition, the TCPA prohibits any call (other than a call made for
 9 emergency purposes or made with the prior express consent of the called party) using any
 10 automatic telephone dialing system or an artificial or prerecorded voice to any telephone number
 11 assigned to a paging service, cellular telephone service, specialized mobile radio service, or other
 12 common carrier service, or any service for which the called party is charged for the call.
 13

14 67. In the FCC’s Report and Order of October 16, 1992, the Commission stated:

15 “We emphasize that under the prohibitions set forth in 227(b)(1) and in
 16 64.1200(a)-(d) of our rules, only calls placed by automatic telephone
 17 dialing systems or using an artificial or prerecorded voice are prohibited.
 18 If a call is otherwise subject to the prohibitions of 64.1200, persons who
 19 knowingly release their phone numbers have in effect given their
 20 invitation or permission to be called at the number which they have
 21 given, absent instructions to the contrary. Hence, telemarketers will not
 22 violate our rules by calling a number which was provided as one at which
 23 the called party wishes to be reached. However, if a caller's number is
 24 ‘captured’ by a Caller ID or an ANI device without notice to the
 25 residential telephone subscriber, the caller cannot be considered to have
 26 given an invitation or permission to receive autodialer or prerecorded
 27 voice message calls. Therefore, calls may be placed to “captured”
 28 numbers only if such calls fall under the existing exemptions to the
 restrictions on autodialer and prerecorded message calls.” (¶ 31.)

68. In the FCC’s Report and Order of July 3, 2003, the Commission stated:

“We emphasize that under the prohibitions set forth in 227(b)(1) and in
 64.1200(a)-(d) of our rules, only calls placed by automatic telephone
 dialing systems or using an artificial or prerecorded voice are prohibited.
 If a call is otherwise subject to the prohibitions of 64.1200, persons who
 knowingly release their phone numbers have in effect given their

invitation or permission to be called at the number which they have given, absent instructions to the contrary. Hence, telemarketers will not violate our rules by calling a number which was provided as one at which the called party wishes to be reached. However, if a caller's number is 'captured' by a Caller ID or an ANI device without notice to the residential telephone subscriber, the caller cannot be considered to have given an invitation or permission to receive autodialer or prerecorded voice message calls. Therefore, calls may be placed to "captured" numbers only if such calls fall under the existing exemptions to the restrictions on autodialer and prerecorded message calls." (§ 31.)

Furthermore:

"[T]o exclude from these restrictions equipment that use predictive dialing software from the definition of 'automated telephone dialing equipment' simply because it relies on a given set of numbers would lead to an unintended result. Calls to emergency numbers, health care facilities, and wireless numbers would be permissible when the dialing equipment is paired with predictive dialing software and a database of numbers, but prohibited when the equipment operates independently of such lists and software packages. We believe the purpose of the requirement that equipment have the "capacity to store or produce telephone numbers to be called" is to ensure that the prohibition on autodialed calls not be circumvented. Therefore, the Commission finds that a predictive dialer falls within the meaning and statutory definition of 'automatic telephone dialing equipment' and the intent of Congress." (§ 133.)

69. Moreover, the FCC has held that prohibitions under the TCPA apply to calls automatically dialed from stored lists of telephone numbers or a database of numbers, as well as random or sequentially generated numbers, without human intervention.

70. In the FCC's Report and Order of January 4, 2008, the Commission noted:

"...that the evolution of the teleservices industry had progressed to the point where dialing lists of numbers was far more cost effective, but that the basic function of such dialing equipment, had not changed—the capacity to dial numbers without human intervention. The Commission noted that it expected such automated dialing technology to continue to develop and that Congress had clearly anticipated that the FCC might need to consider changes in technology." (§ 13.)

Furthermore, the Commission found that:

"...calls to emergency numbers, health care facilities, and wireless numbers are permissible when the dialing equipment is paired with

1 predictive dialing software and a database of numbers, but prohibited
 2 when the equipment operates independently of such lists, would be
 3 inconsistent with the avowed purpose of the TCPA and the intent of
 4 Congress in protecting consumers from such calls.” (¶ 14.)

5 71. In the FCC’s Notice of Proposed Rulemaking of May 22, 2012, the Commission
 6 stated:

7 “Under the TCPA, the term “automatic telephone dialing system” is
 8 defined as ‘equipment which has the capacity– (A) to store or produce
 9 telephone numbers to be called, using a random or sequential number
 10 generator; and (B) to dial such numbers.’ Id. at § 227(a)(1). The
 11 Commission has emphasized that this definition covers any equipment
 12 that has the specified capacity to generate numbers and dial them without
 13 human intervention whether or not the numbers called are randomly or
 14 sequentially generated or come from calling lists.” (p. 4, footnote 12.)

15 72. In the FCC’s Declaratory Ruling and Order of July 10, 2015, the Commission
 16 stated:

17 “The Commission declined to distinguish between calls to wireless
 18 telephone numbers made by dialing equipment ‘paired with predictive
 19 dialing software and a database of numbers’ and calls made ‘when the
 20 equipment operates independently of such lists and software packages.’
 21 Recognizing the developments in calling technology, the Commission
 22 found that ‘[t]he basic function of such equipment, however, has not
 23 changed—the capacity to dial numbers without human intervention.’ The
 24 Commission found it troubling that predictive dialers, like dialers that
 25 utilize random or sequential numbers instead of a list of numbers, retain
 26 the capacity to dial thousands of numbers in a short period of time and
 27 that construing the autodialer definition to exclude predictive dialers
 28 could harm public safety by allowing such equipment to be used to place
 potentially large numbers of non-emergency calls to emergency numbers,
 a result the TCPA was intended to prevent. The Commission concluded
 that the TCPA’s unqualified use of the term ‘capacity’ was intended to
 prevent circumvention of the restriction on making autodialed calls to
 wireless phones and emergency numbers and found that “a predictive
 dialer falls within the meaning and statutory definition of ‘automatic
 telephone dialing equipment’ and the intent of Congress.” (¶ 14.)

73. The FCC also directly addressed Air2Web’s role as an SMS aggregator comprising
 an ATDS in its Declaratory Ruling and Order of July 10, 2015:

“We also find that parties cannot circumvent the TCPA by dividing
 ownership of dialing equipment. In their Petition, Fried and Evans seek a

1 ruling that a combination of equipment used by separate entities to send
 2 text messages constitutes an autodialer under the TCPA. The Petitioners
 3 in this case received text messages from a beauty salon that had
 4 contracted with another party, Textmunications, Inc. (Textmunications),
 5 to transmit advertisements in the form of text messages to their current
 6 and former customers. Textmunications, in turn, contracted with
 7 Air2Web, a mobile messaging aggregator, to transmit the messages. As
 8 described in the Fried Petition and the Referral Order, the beauty salon
 9 provided customer data to Textmunications, who stored this information
 10 on its own equipment and databases. Textmunications then entered into
 an agreement with Air2Web to use its equipment to transmit the text
 messages to the recipients. In effect, the separate equipment divided the
 storage and calling functions between these two companies. As a result,
 Air2Web and Textmunications allege that their equipment should not be
 considered an autodialer because neither system, acting independently,
 has the capacity both to store or produce numbers, and dial those
 numbers as required by the TCPA. (§ 23.)

11 We conclude that such equipment can be deemed an autodialer if the net
 12 result of such voluntary combination enables the equipment to have the
 13 capacity to store or produce telephone numbers to be called, using a
 14 random or sequential number generator, and to dial such numbers. The
 15 fact that two separate entities have voluntarily entered into an agreement
 16 to provide such functionality does not alter this analysis. As one
 17 commenter notes, this conclusion is consistent with the statutory
 18 language and prior Commission interpretations of the TCPA. The TCPA
 19 uses the word “system” to describe the automated dialing equipment that
 20 is defined in section 227(a)(1) of the Act. The Commission noted, in
 21 concluding that a predictive dialer meets the definition of an autodialer,
 that “[t]he hardware, when paired with certain software, has the capacity
 to store or produce numbers and dial those numbers.” As a result, the
 Commission has recognized that various pieces of different equipment
 and software can be combined to form an autodialer, as contemplated by
 the TCPA. The fact that these individual pieces of equipment and
 software might be separately owned does not change this analysis.” (§
 24.)

22 **TELEPHONE NUMBERING AND NUMBER ANALYSIS**

23 74. Nearly 50% of all households in the U.S. today exclusively use cell phones.

24 Cellular telephone numbers are often used as home, residential, business or other numbers and
 25 are subsequently designated as such on forms and other records. Due to the inherent unreliability
 26 of these forms and records as the guiding information for making automatic outbound telephone
 27 calls, most telemarketers use a highly reliable and inexpensive technology solution that has been
 28

1 available to them for well over a decade.

2 75. In November, 2003, the FCC mandated the implementation of a service known as
3 “number portability” to be offered by both landline and cellular common carriers to all landline
4 and cellular subscribers. Specifically, the service is characterized by two features: Local Number
5 Portability (“LNP”) and Wireless Local Number Portability (“WLNP”). LNP enables cellular
6 subscribers to “port,” or transfer, their cellular telephone numbers from a cellular carrier to a
7 landline carrier within a defined geographic local area to essentially become home landline
8 telephone numbers and vice versa. WLNP enables cellular subscribers to “port,” or transfer, their
9 cellular telephone numbers from one cellular carrier to another, allowing them to essentially own
10 their telephone number regardless of which cellular carrier they wish to subscribe.

12 76. Because of number portability, there is no distinguishing characteristic within the
13 telephone number format and the value of the digits themselves to determine which carrier
14 services a particular telephone number and whether the number is even a landline or cellular
15 number. The standard numbering plan in the United States for both landline and cellular
16 telephone numbers is the ten-digit number format: “NPA-NXX-XXXX.” “NPA” refers to the
17 Numbering Plan Area, more commonly known as the three-digit “area code.” The NPA is also of
18 the format “NXX.” The entire format of the number, “NXX-NXX-XXXX” refers to a numbering
19 plan where the digit “N” can be any number from 2 through 9 and the digit “X” can be any
20 number from 0 through 9.

22 77. Prior to November, 2003 and the implementation of number portability as mandated
23 by the FCC, the North American Numbering Plan Administrator (“NANPA”) provided blocks of
24 numbers to each individual telephone carrier (either wireline or cellular) to provide to its
25 subscriber customers. The NANPA is the North American authority that operates, manages and
26 maintains all aspects of the use of telephone numbers in the United States and its territories as
27 well as Canada, Bermuda and 17 Caribbean nations. Because number portability had yet to take
28

1 effect, the values of telephone numbers of the format “NXX-NXX-XXXX” easily and
2 unambiguously revealed whether an individual telephone number was served by a wireline or
3 cellular telecommunications carrier. This is because blocks of numbers provided by the NANPA
4 to the individual telecommunications carrier companies were based upon the NPA values (the
5 first three digits of the telephone number, with the format “NXX”) and the exchange code values
6 (the second three digits of the telephone number, with the format “NXX”).

7
8 78. If a subscriber wishes to port his or her landline telephone number to a cellular
9 telephone number, or vice versa, or their telephone number to another competing landline or
10 cellular carrier, the carrier is required to do so within a few hours or less. To do this, all of the
11 landline and cellular carriers are connected to a nationwide real-time number portability
12 database. The primary number portability database is owned, operated and maintained by an
13 independent company known as ©Telcordia Technologies, Inc. dba “iconectiv.”² Because of
14 the FCC mandate for number portability among all common carriers, a centralized real-time
15 telephone number portability database needs to be employed for any and all telephone calls to be
16 completed to the appropriate carrier network.

17
18 79. The number portability database essentially associates each and every telephone
19 number with a landline or cellular carrier network identifier, enabling calls to be made to the
20 proper landline or cellular carrier network. During the course of establishing each and every
21 telephone call and to deliver those calls to the proper network servicing the called party numbers,
22 the number portability database is queried in real-time so that calls can terminate in the proper
23 carrier network and properly delivered to the called party. Due to the critical nature of this
24 service, reliability of iconectiv’s database is among the highest in the telecommunications
25 industry.

26
27 80. Iconectiv maintains and operates the authoritative number portability database

28 ²<http://www.iconectiv.com/numbering/number-portability-administration-center-npac>.

1 serving the carriers. Because of the FCC mandate for number portability among all common
2 carriers, a centralized real-time telephone number portability database needs to be employed so
3 that all telephone calls can be routed to the appropriate carrier network and be completed.
4 Without that database, it would be difficult or impossible to route telephone calls to the
5 appropriate carriers.

6 81. Iconnectiv, as well as other information services companies that provide wholesale
7 access to iconnectiv's database, is commonly employed by telemarketing companies to analyze
8 databases or lists of telephone numbers prior to calling them using an automatic telephone
9 dialing system. Iconnectiv and its client wholesalers lease and maintain access to the number
10 portability database enabling organizations to definitively know whether any telephone numbers
11 in a list of numbers are cellular or not. I have personally been involved with contracting these
12 organizations to obtain this telephone number data, both for wireless network products I have
13 personally designed and in many TCPA cases.

14 82. Aside from iconnectiv, there exist several commercial information service
15 companies that collect, maintain and analyze telephone number data for various commercial
16 information purposes. Beside subscribing to iconnectiv's database, these companies can provide
17 the porting and carrier history of cellular and landline telephone numbers.

18 83. I have a great deal of personal and technical experience with third-party information
19 service companies such as CompliancePoint³ (a subsidiary of PossibleNOW, Inc.) and Contact
20 Center Compliance Corporation.⁴ These organizations maintain a complete database, updated
21 daily, of all telephone numbers and related information used in the United States. For each
22 telephone number in the United States, these organizations can determine the associated
23 telecommunications carrier, whether the number is a landline number or cellular number, and the
24

25
26
27
28 ³ See <http://www.CompliancePoint.com>.

⁴ See <http://www.DNC.com>.

1 porting history of the telephone number.

2 84. In fact, these organizations can access this information for any given date in the
3 past, regardless of whether the number was ever ported before or after that date. This is because
4 these companies download the updates to the iconectiv number portability database on a daily
5 basis and continually store and save the downloaded data along with the date of the update. Thus,
6 historical information regarding a telephone number's type (*e.g.*, landline or cellular), associated
7 carrier and date of any changes is continually and always preserved. I have been personally
8 involved with these companies to provide telephone number data analyses in several TCPA class
9 action lawsuits.
10

11 85. In order for an SMS aggregator to send automatic text messages containing a short
12 code address from a computerized platform to cellular subscribers, it must first determine the
13 cellular carrier that serves that number. Once that carrier is determined, the automatic mobile-
14 terminated message can then be transmitted to that particular carrier over the appropriate
15 connection and subsequently to the cellular subscriber. To do this, SMS aggregators maintain
16 connectivity to iconectiv's real-time database. Before each text message is transmitted, the SMS
17 aggregator performs validation of the format of the telephone number; if valid, it then performs a
18 query to iconectiv's database.
19

20 86. Telephone number validation is the process whereby a telephone number is
21 determined to be a valid format, that is, of the form NXX-NXX-XXXX as previously described.
22 If a telephone number is not of this format, an error is recorded and no text message is
23 transmitted. If the format is valid, a query is made by passing the cellular telephone number
24 (which is the destination address of the mobile-terminated text message) to the iconectiv
25 database requesting the identification and type of carrier associated with that number. The carrier
26 type indicates whether the number is a landline or cellular number. If the telephone number in
27 the query is not in service, or otherwise not a verifiable number, an error response is returned to
28

1 the SMS aggregator and a message is not transmitted. If a carrier identifier value and carrier type
2 is returned from the database to the SMS aggregator for the query, and if the carrier type is
3 cellular, and if the SMS aggregator maintains a connection to the indicated cellular carrier, only
4 then can the automatic text message be transmitted by the SMS aggregator to the carrier
5 indicated in the query response.

6 87. If the carrier is not a cellular carrier or if a connection to the carrier identified is not
7 supported by the SMS aggregator, a message is not transmitted.

8 88. Based on my knowledge, education, experience, expertise and training, it is my
9 opinion that consumers' telephone numbers can be definitively and clearly determined to be
10 either cellular or landline numbers. Moreover, the method described is the precise means by
11 which Air2Web (or any other SMS aggregator) would have used for the cellular telephone
12 numbers provided to them by the Defendant before sending text messages to the Plaintiffs and
13 the potential class members.

14 89. Accordingly, the list of telephone numbers that were produced in discovery in this
15 case (Bates Nos. bebe002029-bebe002030) can be analyzed by the same means in order to
16 determine which of these numbers would have been sent a text message. This analysis will
17 produce a final list of cellular telephone numbers that would have been sent a text message by
18 Air2Web on behalf of the Defendant.

19 90. The ability to perform the process described to determine whether a list of phone
20 numbers were sent a text message or not from Defendant (and the potential class members) is an
21 inexpensive and straightforward administrative process commonly used in the telemarketing
22 industry.

23 **CONCLUSIONS**

24 91. Bebe is a company marketing and selling retail products and services to the public,
25 from both traditional brick-and-mortar department stores and online via the Internet.

1 92. Air2Web was a mobile marketing technology company providing automatic text
2 message services and SMS aggregation services to branded companies.

3 93. Bebe maintained a business relationship with Air2Web and Air2Web enabled bebe
4 to use Air2Web's automatic text message and SMS aggregation systems.

5 94. Air2Web operated technology to perform automatic text message marketing and
6 promotional campaigns on behalf of bebe.

7 95. Bebe collected telephone numbers from customers at the retail POS and stored them
8 in a database.

9 96. Bebe electronically transferred the list of telephone numbers to Air2Web's
10 automatic text messaging system.

11 97. Air2Web automatically applied both the numeric short code "42323" as the
12 origination address and each collected and stored cellular telephone number as the destination
13 address into the text messages to be sent.

14 98. Air2Web programmatically assembled and created each complete text message in
15 an automatic fashion without human intervention.

16 99. Air2Web automatically sent those created text messages to the appropriate cellular
17 networks which subsequently sent them to cellular telephone subscribers *en masse*.

18 100. Continuous storage of the collected cellular telephone numbers enabled bebe
19 and Air2Web to continue to automatically transmit text messages to consumers.

20 101. The computer system equipment employed by bebe has the capacity to
21 automatically send text messages *en masse* from a list of numbers supplied to it without human
22 intervention.

23 102. The computer system equipment employed by bebe did, in fact,
24 automatically send text messages *en masse* from a list of numbers without human intervention.

25 103. It is my understanding from Plaintiffs' counsel that the FCC has determined
26
27
28

1 that Air2Web's automatic text messaging system can be deemed to be an ATDS if the result of
2 the combination Air2Web's system and another system that stores telephone numbers to be
3 dialed enables the equipment to have the capacity to store or produce telephone numbers to be
4 called, using a random or sequential number generator, and to dial such numbers.

5 104. Based on my analysis of the equipment employed by bebe and Air2Web's
6 automatic text messaging system, I conclude that this equipment has the capacity to, and does,
7 store telephone numbers to be called, dials (*sends messages to*) telephone numbers from a stored
8 list of numbers and automatically dials (*sends text messages to*) those telephone numbers without
9 human intervention.
10

11 105. Therefore, I conclude that the equipment used by bebe to operate the
12 automatic mobile text message campaign at issue in this case qualifies as an ATDS as defined
13 within the TCPA and associated regulations.
14

15 **SUMMARY OF OPINIONS**

16 106. It is my opinion, based on my knowledge, education, experience, expertise,
17 training, my review of the relevant documents and the facts described above, that bebe employed
18 equipment which has the capacity to, and does, store telephone numbers to be called from a list
19 of numbers and automatically sends text messages to those telephone numbers without human
20 intervention.
21

22 107. It is my opinion, based on my review of the relevant documents and the
23 facts described above, that the Defendant employed an ATDS as defined within the TCPA to
24 send automatic text messages to cellular telephone numbers, including to the cellular telephone
25 numbers of the Plaintiffs and potential class members.
26

27 108. It is my opinion, based on my knowledge, education, experience, expertise,
28 training and the facts described above that telephone numbers within Defendant's CRM database
can be analyzed to produce a final list of only cellular telephone numbers that were sent a text

1 message by Defendant. Furthermore, the ability to do so is a commonly-practiced and
2 straightforward administrative process.

3 109. My opinions in this declaration are based upon extensive experience in the
4 telecommunications industry, a detailed understanding of telecommunications systems, a
5 detailed understanding of Short Message Service (“SMS”) technology and a detailed
6 understanding of mobile marketing employing SMS technology. I hereby reserve the right to
7 supplement or modify my opinions detailed in this report to the extent that new information is
8 made available through discovery or other means.
9

10 I declare that the foregoing is true and correct subject to the laws of perjury of the
11 United States.

12 Executed in Las Vegas, Nevada, on this 26th day of December 2016.

13
14 

15 Randall A. Snyder
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EXHIBIT A

Randall A. Snyder
Curriculum Vitae

Professional Summary

Mr. Snyder has over 30 years of experience in telecommunications network and system architecture, engineering, design and technology. He has expertise in the fields of both wireline and wireless telecommunications networking technology. He has been retained as an expert witness in over 135 cases regarding telecommunications technology including nearly 100 Telephone Consumer Protection Act (TCPA) cases, patent cases and other areas of litigation regarding telecommunications network technology.

Mr. Snyder has taught many classes and seminars on both wireline and wireless telecommunication network technologies and has been a panelist and speaker at numerous conferences at the Institute of Electrical and Electronics Engineers (IEEE) and the Cellular Telecommunications and Internet Association (CTIA). He spent several years developing network technology standards within the American National Standards Institute (ANSI) and the Telecommunications Industry Association (TIA), providing technical contributions and authoring and editing telecommunications proposed standards documents. Most notably, ANSI-93, providing interconnection technology between wireline and wireless telecommunications networks.

Mr. Snyder is the co-author of the McGraw-Hill books "Mobile Telecommunications Networking with IS-41," and "Wireless Telecommunications Networking with ANSI-41, 2nd edition" published in 1997 and 2001, respectively. He holds 29 patents on telecommunications networking technology and has been hired as a consultant by the CTIA, as well as many wireline and wireless telecommunications companies, including Bell Laboratories, IBM, Google, McCaw Cellular, AirTouch, AirTouch International, AT&T Wireless, AT&T Mobility, Lucent, Nokia, Ericsson, Motorola, Samsung, Siemens, Nextwave, MCI, Daewoo, Globalstar, T-Mobile, Sprint, U.S. Cellular, Telelobe Canada, Teledesic and others. He was also nominated in 2006 for a National Television Arts Emmy Award for Outstanding Achievement in Advanced Media Technology for unique wireless content distribution technology he designed while at Entriq, Inc.

Subject Matter Expertise

- | | |
|--|---|
| ▪ Wireless and cellular network systems | ▪ Call Processing and Calling Features |
| ▪ Wireless and cellular network architectures | ▪ Billing Systems Support (BSS) |
| ▪ Network interconnectivity | ▪ Operations, Administration, Maintenance & Provisioning (OAM&P, OSS) |
| ▪ GSM, UMTS, LTE and ANSI-41 (CDMA) standards and networks | ▪ Signaling System No. 7 (SS7) |
| ▪ Location Based Services (LBS) | ▪ LTE Diameter Signaling |
| ▪ Short Message Service (SMS) | ▪ Multifrequency Signaling |
| ▪ Multimedia Message Service (MMS) | ▪ Automatic Telephone Dialing Systems (ATDS) |
| ▪ Wireless Application Protocol (WAP) | |

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Notable Expert Witness Engagements

- Retained as Plaintiff's testifying expert witness in *Satterfield v. Simon & Schuster, Inc.* No. 07-16356, D.C. No. CV-06-02893-CW Opinion. Appeal from the United States District Court for the Northern District of California. Opinion remanded by the United States Court of Appeals for the Ninth Circuit. Personally cited in opinion by N.R. Smith, Circuit Judge, June 19, 2009.

Result of expert opinion greatly expanded the TCPA and was followed by formal FCC Declaratory Rulings citing this case that text messages are calls as defined by the TCPA, and sending messages to a stored electronic list of telephone numbers falls within the definition of an Automatic Telephone Dialing System (ATDS).

- Retained as Plaintiff's testifying expert witness in *Gomez v. Campbell-Ewald Company*. No. 13-55486, D.C. No. 2:10-CV-02007-DMG-CW Opinion. Appeal from the United States District Court for the Central District of California. Opinion vacated by the United States Court of Appeals for the Ninth Circuit. Opinion by Fortunato P. Benavides, Circuit Judge. Filed September 19, 2014. Appellate court opinion upheld by the Supreme Court of the United States. Opinion by Justice Ginsburg, January 20, 2016.
- Retained by the Department of Justice Canada as Plaintiff's consulting expert in *Commissioner of Competition v. Rogers Communications Inc., Bell Canada, Telus Corporation and the Canadian Wireless Telecommunications Association*. Defendants accused of deceptive and misleading marketing practices related to premium text messages leading to improper charging for multimedia content delivery using various mobile billing mechanisms. Case settled favorably for the Canada Competition Bureau in May, 2016.
- Retained by IBM de México as testifying expert witness in *IBM de México Comercialización y Servicios, S. de R.L. de C.V. adverse Iusacell, S.A. de C.V.* International \$4B material breach of contract case under the International Chamber of Commerce International Court of Arbitration. A decision is currently being deliberated by the international court.

Education

<u>Year</u>	<u>College or University</u>	<u>Degree</u>
1984	Franklin and Marshall College	B.A., Mathematics (minor in Astronomy)

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Professional Experience

From: January 2007
To: Present
Organization: Wireless Research Services, LLC; Las Vegas, NV
Title: President and Founder
Summary: Technology and expert witness consulting services. Areas of subject matter expertise include mobile and cellular networking, 2G, 2.5G, 3G, LTE, GSM, ANSI-41, LBS, SMS, MMS, WAP, SS7, Diameter Signaling, Automatic Telephone Dialing Systems (ATDS) and mobile multimedia systems. With this expertise, primary consulting is in the area of system and product analysis, architecture, design, development, management and marketing as well as patent preparation and development, expert reports, expert testimony and litigation support. Particular areas of expert witness experience include patent litigation and the Telephone Consumer Protection Act (TCPA).

From: September 2007
To: August 2010
Organization: Finsphere Corporation; Bellevue, WA
Title: Vice President Product Management & Wireless Engineering
Summary: Was among the first handful of employees at Finsphere prior to Series A funding. As vice president of product management and wireless engineering and a member of the executive management team, was responsible for product management activities and wireless technology solutions for Finsphere's products. These products encompassed mobile location based software-as-a-service (SaaS) products offered primarily to financial institutions and banks. Responsibilities included product requirements and system functionality, strategic planning, R&D of new technologies, wireless network interconnectivity as well as wireless technology for Finsphere's products. Was also responsible for market strategies, white papers and development and management of intellectual property and patent applications.

From: May 2004
To: April 2007
Organization: Entriq, Inc.; Carlsbad, CA
Title: Vice President Product Management
Summary: Was responsible for the entire product management team and system architecture for Entriq's products and services. Products encompassed mobile and broadband pay media applications (specializing in video), digital rights management (DRM) and security solutions, e-commerce and m-commerce systems as well as ad management and delivery solutions for both broadband and mobile media services. Responsibilities also included network and protocol analysis, market analysis, evaluation of third-party software and services, all vendor contract negotiations, RFP responses and overall administrative responsibility for the entire product line. Was responsible for directing

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and managing the technical writing department producing all user documentation associated with the products. Was nominated for a National Television Arts and Sciences Emmy Award for Outstanding Achievement in Advanced Media Technology for unique mobile technology designed, developed and commercially deployed as part of Entriq's solution.

From: February 2002
 To: November 2003
 Organization: m-Qube, Inc. (acquired by Verisign); Boston, MA
 Title: Vice President Product Management and Carrier Marketing and Founder
 Summary: Was responsible for the entire product management and carrier marketing teams, member of the executive management team and one of the founders. Was responsible for all product management, system engineering and product strategy for all business conducted with the wireless industry and carriers. Was in charge of the market strategy and wireless network architecture for m-Qube's mobile marketing service, a value-added service offering mobile marketing solutions to wireless carriers using short message services (SMS) for GSM and CDMA networks. The service architecture enabled branded companies to deploy promotional marketing and messaging campaign dialogs with mobile subscribers via SMS. The network architecture required definition and design of all aspects of the overall network including SMS technology, interconnectivity to the wireless carriers, signaling, traffic management, market requirements for features and services, network equipment specifications and OA&M.

From: April 2001
 To: February 2002
 Organization: Bitfone Corporation; Mountain View, CA
 Title: Vice President Product Management and Marketing
 Summary: Was responsible for the entire product management team and all of the company's product definitions, strategies and positioning. Had direct responsibility for market and product requirements, market research, competitive analysis, product strategy and sales strategy. Bitfone's products included the iBroker, a mobile Internet technology infrastructure platform to enhance WAP, MMS, mobile e-mail and wireless messaging. Was also responsible for the mProve product (obtained via merger with Digital Transit, Inc.) providing over-the-air firmware and software update technology to mobile devices.

From: November 2000
 To: April 2001
 Organization: Openwave Systems (via merger of Phone.com and Software.com); Redwood City, CA
 Title: Executive Director Emerging Technologies
 Summary: Was responsible for new 3G technologies and providing market and product plans for those technologies for the entire product line. Primary responsibility for the 3GPP Multimedia Messaging Service (MMS), collecting market requirements from customers, developing corporate strategy for MMS and preparing the organization for

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additional development of the product. In addition, taught wireless technology classes to the different departments at Openwave and educated them on wireless service provider strategies and network technologies.

From: March 2000
 To: November 2000
 Organization: @Mobile and Software.com (via acquisition); Santa Barbara, CA
 Title: Director Wireless Product Management
 Summary: Was responsible for the product managers and for all of the wireless internet infrastructure products. Responsibilities included the overall market and product strategy for Software.com's wireless e-mail, short message service, instant messaging and unified messaging products. Was responsible for the overall revenues generated from these products based on detailed product plans and internal organizational planning. Much of his time was spent working with the executive management team and the sales directors on corporate market strategy.

From: December 1999
 To: March 2000
 Organization: FreeSpace Communications, Inc.; Palo Alto, CA
 Title: Consulting Network Systems Engineer
 Summary: Was responsible for the complete design of the backbone network architecture for a new broadband fixed wireless data network. This new architecture incorporated DSL as the backbone network technology. The network architecture required definition and design of all aspects of the overall network plan including DSL technology, IP technology, ATM technology, interconnectivity to the PSTN, operations signaling, traffic engineering, market requirements for network features and services, network equipment specifications and OA&M.

From: April 1992
 To: December 1999
 Organization: Synacom Technology, Inc.; San Jose, CA
 Title: Executive Director Product Marketing and Management
 Summary:

1998 – 1999 Executive Director Product Marketing and Management

- Responsible for managing the entire product management and marketing department of Synacom Technology, including market research and planning, product management and market communications. Lead the entire design, definition and product direction of all aspects of Synacom's products.

1997 – 1998 Director Systems Engineering

- Responsible for coordinating and managing the overall functional and requirements specifications for all Synacom's products as well as the detailed test
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plans used for alpha system testing of those products. Also responsible for directing and managing the technical writing department producing all of the user documentation associated with all of the products. Provided the primary sales engineering support for sales and marketing and was involved in nearly every aspect of the product lifecycle.

1996 – 1997

Director Consulting Services and Principal Engineer

- Responsible for obtaining, coordinating and managing all technical consulting projects performed by the company. These projects included wireless network architecture and design for both IS-41 and GSM networks for dozens of client companies (carriers and equipment manufacturers). In this role, continued as a member of both the ANSI/TIA TR45.2 Subcommittee for cellular radio intersystem operations standards and the ANSI/TIA TR46 Committee for 1900 MHz GSM PCS standards. Major contributor to TR46 in the area of GSM-to-IS-41 network interworking. Also authored, edited and published TIA standard specification IS-93 for cellular network interconnections to the PSTN and ISDN.

1992 – 1996

Principal Engineer

- Consulted for McCaw Cellular, AT&T Wireless, AirTouch Cellular, AirTouch Satellite Services, Globalstar, Nokia, MCI, Sprint PCS, XYPoint, NextWave, NewNet American Personal Communications, CTIA and several other national and international wireless telecommunications companies.
- Wrote wireless network design and analysis papers including HLR specifications, Authentication Center specifications, PCS network design, short message service (SMS) design, intelligent network applications of wireless technology and in-house expert in signaling protocols. Extensive experience with Signaling System No. 7, including both protocol implementation and design. Authored the Standard Requirements Document for the SS7-based A-interface between the base station and MSC used throughout the TIA. Also involved in the design of the Bellcore WACS/PACS technology, digital cellular network service and feature descriptions, SCPs and HLRs. Extensive experience developing the architecture and design of distributed intelligent networks including, SS7, cellular, PCS, AIN and WIN networks. Key member of the original Cellular Digital Packet Data (CDPD) architecture and design team. Designed the CDPD air interface protocol emulator developed and marketed by AirLink Communications, Inc.

From: December 1990
 To: April 1992
 Organization: AT&T Bell Laboratories; Whippany, NJ
 Title: Consulting Member of the Technical Staff
 Summary: Evaluated wireless technology services for the Wireless Systems Architecture group. Also participated as a system engineer on the design of the Global System for Mobile (GSM) communication architecture and a software engineer developing the base station controller (BSC) for GSM. Also responsible for planning, coordinating, designing and testing the SS7 protocol software for the GSM A-interface between the BSC, MSC and operations and maintenance center (OMC). High-level and detailed

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design specifications were developed to coordinate the protocol testing between two remote laboratories. Provided the traffic analysis and traffic engineering of call traffic for the BSC. Specifically designed and developed the dynamic traffic overload control subsystem for the BSC. Presentations were given to technical staffs at multiple Bell Laboratories facilities supporting this work.

From: May 1987
To: December 1990
Organization: DGM&S, Inc.; Mt. Laurel, NJ
Title: Senior Staff Consultant
Summary: Responsible for the design, development and test coordination of an advanced intelligent network applications platform for a service control point (SCP). Also spent several years as a consulting software engineer for Siemens AG, developing and testing SS7 and call control software for the EWSD digital switching system for international as well as U.S. national network implementations. This work involved extensive travel to both Frankfurt and Munich, Germany for software system design and testing. Also involved in the concept, design and technical marketing of proprietary enabling technology software products for SS7 and ISDN.

From: May 1986
To: May 1987
Organization: ADP, Inc.; Mt. Laurel, NJ
Title: Senior Software Engineer and Analyst
Summary: Responsible for the design and development of data communications and real time database application software for a host data center that provided real time financial information to large brokerage houses. Data communication protocol expertise in HDLC, RS-232 and IBM BiSync.

From: June 1984
To: May 1986
Organization: C3, Inc.; Cape May, NJ
Title: Consulting Systems Analyst and Software Engineer
Summary: Civilian consulting systems analyst and engineer to the U.S. Coast Guard Electronics Engineering Center (EECEN) for C3, Inc. Developed sophisticated database software for shipboard use including inventory and law enforcement applications. The work included the follow-through of the entire project lifecycle including writing of requirements, functional, design and program specifications, coding, debugging, alpha and beta testing, release, shipboard installation and continuing technical support of the product. Received a personal commendation from Admiral W.F. Merlin, Chief, Office of Command, Control and Communications, for successful efforts on these projects.

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Professional Affiliations, Achievements & Awards

- Personal commendation from Admiral W.F. Merlin, Chief, Office of Command, Control and Communications, USCG (1986)
- Nominated, Technology and Engineering Emmy Award for Outstanding Achievement in Advanced Media Technology, 2006

Patents, Publications & Citations

Issued Patents

<u>Patent</u>	<u>Date</u>	<u>Description</u>
US 9,185,123	11/10/2015	Systems and Method for Mobile Identity Protection for Online User Authentication
US 9,154,952	10/6/2015	Systems and Methods for Authenticating a User of a Computer Application, Network, or Device Using a Wireless Device
US 9,092,803	7/28/2015	System and Method to Initiate a Mobile Data Communication Utilizing a Trigger System
US 8,954,102	2/10/2015	System and Method for Determining and Delivering Appropriate Multimedia Content to Data Communication Devices
US 8,938,215	1/20/2015	System and Method to Initiate a Mobile Data Communication Utilizing a Trigger System
US 8,923,902	12/30/2014	Mobile Messaging Short Code Translation and Routing System and Method
US 8,839,394	9/16/2014	Systems and Methods for Authenticating a User of a Computer Application, Network, or Device Using a Wireless Device
US 8,831,564	9/9/2014	System and Method for Mobile Identity Protection Using Mobile Device Signaling Network Derived Location Pattern Recognition
US 8,819,141	8/26/2014	Centralized Mobile and Wireless Messaging Opt-out Registry System and Method
US 8,761,732	6/24/2014	System and Method to Initiate a Mobile Data Communication Utilizing a Trigger System
US 8,670,753	3/11/2014	System and Method for Determining and Delivering Appropriate Multimedia Content to Data Communication Devices
Israel 200949	1/10/2014	System and Method for Automated Analysis Comparing a Wireless Device Location with Another Geographic Location
Mexico 308720 B	12/4/2013	Sistema y Metodo para el Analisis Automatizado que Compara una Ubicacion del Dispositivo Inalambrico con Otra Ubicacion Geografica

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US 8,588,748	11/19/2013	System and Method for Mobile Identity Protection of a User of Multiple Computer Applications, Networks or Devices
US 8,437,784	5/7/2013	System and Method to Initiate a Mobile Data Communication Utilizing a Trigger System
US 8,374,634	2/12/2013	System and Method for Automated Analysis Comparing a Wireless Device Location with Another Geographic Location
US 8,280,348	10/2/2012	System and Method for Mobile Identity Protection Using Mobile Device Signaling Network Derived Location Pattern Recognition
US 8,155,677	4/10/2012	Mobile Messaging Short Code Translation and Routing System and Method
New Zealand 580499	8/31/2012	System and Method for Automated Analysis Comparing a Wireless Device Location with Another Geographic Location
US 8,131,262	3/6/2010	System and Method to Initiate a Mobile Data Communication Utilizing a Trigger System
US 8,116,731	2/14/2012	System and Method for Mobile Identity Protection of a User of Multiple Computer Applications, Networks or Devices
Australia 2008/115299	2/9/2012	System and Method for Automated Analysis Comparing a Wireless Device Location with Another Geographic Location
S. Africa 2009/06947	1/26/2011	System and Method for Automated Analysis Comparing a Wireless Device Location with Another Geographic Location
US 7,792,518	9/7/2010	System and Method to Initiate a Mobile Data Communication Utilizing a Trigger System
US 7,403,788	7/22/2008	System and Method to Initiate a Mobile Data Communication Utilizing a Trigger System
US 6,128,389	10/3/2000	Authentication Key Management System and Method
US 5,970,144	10/19/1999	Secure Authentication-Key Management System and Method for Mobile Communications
US 5,850,445	12/15/1998	Authentication Key Management System and Method
US 5,799,084	8/25/1998	System and Method for Authenticating Cellular Telephonic Communication

Publications

1. What Workers Want from Wireless by Randall A. Snyder; April 15, 2004. America's Network, Advanstar Communications, Santa Ana, California USA.
 2. Snyder, Randall A. and Gallagher, Michael D. Wireless Telecommunications Networking with ANSI-41 Second Edition; McGraw-Hill, New York, NY USA; © Copyright 2001 Randall A. Snyder and Michael D. Gallagher. *Foreword by Tom Wheeler, current Chairman, Federal Communications Commission.*
 3. Forecasting SS7 Traffic by Randall A. Snyder; November 1, 2000. Wireless Review, Volume 17, Number 21, Intertec Publishing, Overland Park, KS USA.
 4. Gallagher, Michael D. and Snyder, Randall A. Mobile Telecommunications Networking with IS-41; McGraw-Hill, New York, NY USA; © Copyright 1997 Michael D. Gallagher and Randall A. Snyder.
 5. IS-41/GSM Interoperability by Randy Snyder; December, 1995, Cellular Networking Perspectives, Cellular Networking Perspectives, LTD, Calgary, Alberta, Canada.
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Citations

1. Commendation from Admiral W.F. Merlin, Chief, Office of Command, Control and Communications, USCG (1986).
2. Method and Apparatus for Routing Short Messages, US Patent #6308075, Issued October 23, 2001.
3. Mediation Software for Delivery of Interactive Mobile Messaging and Personalized Content to Mobile Devices. Patent Application # 20020120779, August 29, 2002.
4. Automatic In-Line Messaging System, US Patent #6718178, Issued April 6, 2004.
5. Method and System for Wireless Instant Messaging, US Patent #7058036, Issued June 6, 2006.
6. United States Court of Appeals for the Ninth Circuit. Satterfield v. Simon & Schuster, Inc. No. 07-16356, D.C. No. CV-06-02893-CW Opinion. Appeal from the United States District Court for the Northern District of California. Opinion by N.R. Smith, Circuit Judge. Filed June 19, 2009.

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Litigation Support Experience

Expert Engagement:

Type of Matter: Telephone Consumer Protection Act (TCPA), 47 U.S.C. § 227 related to unlawful cellular telephone calls
Law Firm: Law Office of Michael A. Ziegler, P.L.
Case Name: Francescutti v. The CBE Group, Inc.
Services Provided: Testifying expert for plaintiff
Disposition: Ongoing
Date: 2016

Expert Engagement:

Type of Matter: Telephone Consumer Protection Act (TCPA), 47 U.S.C. § 227 related to unlawful cellular telephone calls
Law Firm: Haines & Krieger, LLC
Case Name: Self-Forbes v. Advanced Call Center Technologies, LLC
Services Provided: Testifying expert, expert reports for plaintiff
Disposition: Ongoing
Date: 2016

Expert Engagement:

Type of Matter: Telephone Consumer Protection Act (TCPA), 47 U.S.C. § 227 class action related to short message service (SMS) technology
Law Firm: Engstrom, Lipscomb & Lack
Case Name: Nghiem v. Dick's Sporting Goods, Inc.
Services Provided: Testifying expert for plaintiff
Disposition: Ongoing
Date: 2016

Expert Engagement:

Type of Matter: Intellectual property (patents) related to short message service (SMS) technology
Law Firm: United States Department of Justice (DOJ)
Case Name: CellCast Technologies, LLC v. The United States of America
Services Provided: Testifying expert, expert reports for defendant
Disposition: Ongoing
Date: 2016

Expert Engagement:

Type of Matter: Telephone Consumer Protection Act (TCPA), 47 U.S.C. § 227 related to unlawful cellular telephone calls
Law Firm: McGuire Law, P.C.
Case Name: Katz v. American Honda Motor Co., Inc.
Services Provided: Testifying expert, expert reports for plaintiff
Disposition: Ongoing
Date: 2016

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Expert Engagement:

Type of Matter: Telephone Consumer Protection Act (TCPA), 47 U.S.C. § 227 related to unlawful cellular telephone calls
Law Firm: Bursor & Fisher, P.A.
Case Name: Morris v. SolarCity Corp.
Services Provided: Testifying expert for plaintiff
Disposition: Ongoing
Date: 2016

Expert Engagement:

Type of Matter: Telephone Consumer Protection Act (TCPA), 47 U.S.C. § 227 class action related to short message service (SMS) technology
Law Firm: Keller Rohrback, L.L.P.
Case Name: Wick v. Twilio, Inc.
Services Provided: Consulting expert for plaintiff
Disposition: Ongoing
Date: 2016

Expert Engagement:

Type of Matter: Telephone Consumer Protection Act (TCPA), 47 U.S.C. § 227 related to unlawful cellular telephone calls
Law Firm: Edelman, Combs, Lattuner & Goodwin, LLC
Case Name: Bailey v. Santander Consumer USA, Inc.
Services Provided: Testifying expert, expert reports, depositions for plaintiff
Disposition: Settled
Date: 2016

Expert Engagement:

Type of Matter: Telephone Consumer Protection Act (TCPA), 47 U.S.C. § 227 class action related to unlawful cellular telephone calls
Law Firm: Bailey & Glasser LLP
Case Name: Newhart v. Quicken Loans, Inc. et al.
Services Provided: Testifying expert, expert reports for plaintiff
Disposition: Ongoing
Date: 2016

Expert Engagement:

Type of Matter: Telephone Consumer Protection Act (TCPA), 47 U.S.C. § 227 related to unlawful cellular telephone calls
Law Firm: Manchee & Manchee, PC
Case Name: Gibbs v. Ocwen Loan Servicing, LLC
Services Provided: Testifying expert for plaintiff
Disposition: Ongoing
Date: 2016

Expert Engagement:

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Type of Matter: Telephone Consumer Protection Act (TCPA), 47 U.S.C. § 227 related to unlawful cellular telephone calls
Law Firm: Maney & Gordon, P.A.
Case Name: Holland v. Keesler Federal Credit Bureau
Services Provided: Testifying expert, expert reports, depositions for plaintiff
Disposition: Ongoing
Date: 2016

Expert Engagement:

Type of Matter: Telephone Consumer Protection Act (TCPA), 47 U.S.C. § 227 class action related to short message service (SMS) technology
Law Firm: McGuire Law, P.C.
Case Name: Spencer v. Kohl's Department Stores, Inc.
Services Provided: Testifying expert, expert reports for plaintiff
Disposition: Ongoing
Date: 2016

Expert Engagement:

Type of Matter: Telephone Consumer Protection Act (TCPA), 47 U.S.C. § 227 class action related to unlawful cellular telephone calls
Law Firm: Parisi & Havens LLP
Case Name: Slovin v. SunRun, Inc.
Services Provided: Testifying expert for plaintiff
Disposition: Ongoing
Date: 2016

Expert Engagement:

Type of Matter: Telephone Consumer Protection Act (TCPA), 47 U.S.C. § 227 related to unlawful cellular telephone calls
Law Firm: Law Office of Chris R. Miltenberger, PLLC
Case Name: Harrington v. RoundPoint Mortgage Servicing Corporation
Services Provided: Testifying expert for plaintiff
Disposition: Ongoing
Date: 2016

Expert Engagement:

Type of Matter: Telephone Consumer Protection Act (TCPA), 47 U.S.C. § 227 related to short message service (SMS) technology
Law Firm: Law Office of Troy D. Krenning, LLC
Case Name: Newton v. Comdata, Inc.
Services Provided: Testifying expert for plaintiff
Disposition: Settled
Date: 2016

Expert Engagement:

Type of Matter: Telephone Consumer Protection Act (TCPA), 47 U.S.C. § 227 related to unlawful cellular telephone calls

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Law Firm: Bursor & Fisher, P.A.
Case Name: Yerkes v. RGS, Financial, Inc.
Services Provided: Testifying expert for plaintiff
Disposition: Settled
Date: 2016

Expert Engagement:

Type of Matter: Telephone Consumer Protection Act (TCPA), 47 U.S.C. § 227 class action related to short message service (SMS) technology

Law Firm: Manning Law APC
Case Name: Vizcarra v. Macys.com Inc. et al.
Services Provided: Testifying expert, expert reports for plaintiff
Disposition: Settled
Date: 2016

Expert Engagement:

Type of Matter: Telephone Consumer Protection Act (TCPA), 47 U.S.C. § 227 related to unlawful cellular telephone calls

Law Firm: Sulaiman Law Group, Ltd.
Case Name: Deaderick v. Contract Callers, Inc.
Services Provided: Testifying expert for plaintiff
Disposition: Withdrawn
Date: 2016

Expert Engagement:

Type of Matter: Telephone Consumer Protection Act (TCPA), 47 U.S.C. § 227 class action related to short message service (SMS) technology

Law Firm: McGuire Law, P.C.
Case Name: Zeidel v. A&M (2015) LLC
Services Provided: Testifying expert, expert reports for plaintiff
Disposition: Ongoing
Date: 2015 – 2016

Expert Engagement:

Type of Matter: Telephone Consumer Protection Act (TCPA), 47 U.S.C. § 227 class action related to unlawful cellular telephone calls

Law Firm: Marquis Aurbach Coffing
Case Name: Fisher v. MJ Christensen Jewelers, LLC
Services Provided: Testifying expert, expert reports for plaintiff
Disposition: Ongoing
Date: 2015 – 2016

Type of Matter: Competition Act, § 74.1 R.S.C. 1985, c. C-34 class action related to false and misleading advertisements related to premium text messaging and short message service (SMS) technology

Law Firm: Department of Justice Canada
Case Name: Commissioner of Competition v. Rogers Communications Inc., Bell Canada,

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Services Provided: Telus Corporation and the Canadian Wireless Telecommunications Association
Disposition: Consulting expert for plaintiff
Date: Settled
2013 – 2016

Expert Engagement:

Type of Matter: Telephone Consumer Protection Act (TCPA), 47 U.S.C. § 227 related to unlawful cellular telephone calls
Law Firm: Maney & Gordon, P.A.
Case Name: Ritter v. Wells Fargo Bank, N.A.
Services Provided: Testifying expert for plaintiff
Disposition: Settled
Date: 2015

Expert Engagement:

Type of Matter: Telephone Consumer Protection Act (TCPA), 47 U.S.C. § 227 class action related to short message service (SMS) technology
Law Firm: Bock & Hatch, LLC
Case Name: Kozlow v. Shopkick, Inc.
Services Provided: Testifying expert for plaintiff
Disposition: Withdrawn
Date: 2015

Expert Engagement:

Type of Matter: Telephone Consumer Protection Act (TCPA), 47 U.S.C. § 227 class action related to unlawful cellular telephone calls
Law Firm: Edelson PC
Case Name: Suttles v. Mutual of Omaha Insurance Company
Services Provided: Testifying expert, expert reports for plaintiff
Disposition: Ongoing
Date: 2015

Expert Engagement:

Type of Matter: Telephone Consumer Protection Act (TCPA), 47 U.S.C. § 227 related to unlawful cellular telephone calls
Law Firm: Manchee & Manchee, PC
Case Name: Gebray v. Ocwen Loan Servicing, LLC
Services Provided: Testifying expert, expert reports for plaintiff
Disposition: Ongoing
Date: 2015

Expert Engagement:

Type of Matter: California Invasion of Privacy Act (Penal Code §§ 630) class action related to unlawful recording of telephone conversations
Law Firm: Keller Grover LLP and Law Offices of Scot D. Bernstein
Case Name: Saunders v. Cabela's Incorporated
Services Provided: Testifying expert, expert reports for plaintiff

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Disposition: Settled
Date: 2015

Expert Engagement:

Type of Matter: Telephone Consumer Protection Act (TCPA), 47 U.S.C. § 227 class action related to short message service (SMS) technology
Law Firm: McGuire Law, P.C.
Case Name: Lozano v. Avenue Stores, LLC
Services Provided: Consulting expert for plaintiff
Disposition: Settled
Date: 2015

Expert Engagement:

Type of Matter: Telephone Consumer Protection Act (TCPA), 47 U.S.C. § 227 class action related to short message service (SMS) technology
Law Firm: Bailey & Glasser LLP
Case Name: Phillips v. Mozes, Inc. et al.
Services Provided: Testifying expert, expert reports, depositions for plaintiff
Disposition: Settled
Date: 2015

Expert Engagement:

Type of Matter: Intellectual property (patents) related to mobile location based technology and short message service (SMS) technology
Law Firm: Knobbe, Martens, Olson & Bear, LLP
Case Name: TeleCommunication Systems, Inc. v. Airbus DS Communications, Inc.
Services Provided: Testifying expert for defendant
Disposition: Settled
Date: 2015

Expert Engagement:

Type of Matter: Intellectual property (patents) related to machine-to-machine (M2M) mobile technology
Law Firm: Paul Hastings LLP
Case Name: M2M Solutions LLC v. Novatel Wireless Solutions, Inc.
Services Provided: Testifying expert, USPTO affidavits for patent reexamination for defendant
Disposition: Ongoing
Date: 2015

Expert Engagement:

Type of Matter: Telephone Consumer Protection Act (TCPA), 47 U.S.C. § 227 class action related to short message service (SMS) technology
Law Firm: Mazie Slater Katz & Freeman LLC
Case Name: Meyer v. Bebe Stores Inc.
Services Provided: Testifying expert for plaintiff
Disposition: Ongoing

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Date: 2015

Expert Engagement:

Type of Matter: Telephone Consumer Protection Act (TCPA), 47 U.S.C. § 227 class action related to short message service (SMS) technology
Law Firm: Strategic Legal Practices, APC
Case Name: Haghayeghi v. Guess Inc.
Services Provided: Testifying expert for plaintiff
Disposition: Ongoing
Date: 2015

Expert Engagement:

Type of Matter: Telephone Consumer Protection Act (TCPA), 47 U.S.C. § 227 related to unlawful cellular telephone calls
Law Firm: Bailey & Glasser LLP
Case Name: Stein v. Monterey Financial Services, Inc.
Services Provided: Testifying expert, expert reports for plaintiff
Disposition: Ongoing
Date: 2015

Expert Engagement:

Type of Matter: Telephone Consumer Protection Act (TCPA), 47 U.S.C. § 227 related to unlawful cellular telephone calls
Law Firm: Aronovitz Law
Case Name: McKee v. Navient Solutions, Inc.
Services Provided: Testifying expert for plaintiff
Disposition: Ongoing
Date: 2015

Expert Engagement:

Type of Matter: Telephone Consumer Protection Act (TCPA), 47 U.S.C. § 227 class action related to short message service (SMS) technology
Law Firm: Butsch Roberts & Associates, LLC
Case Name: Moore v. Family Dollar Stores, Inc.
Services Provided: Testifying expert, expert reports for plaintiff
Disposition: Settled
Date: 2015

Expert Engagement:

Type of Matter: Telephone Consumer Protection Act (TCPA), 47 U.S.C. § 227 related to unlawful cellular telephone calls
Law Firm: Bailey & Glasser LLP
Case Name: Jones v. FMS Corp., U.S. Department of Education
Services Provided: Testifying expert for plaintiff
Disposition: Settled
Date: 2015

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Expert Engagement:

Type of Matter: Telephone Consumer Protection Act (TCPA), 47 U.S.C. § 227 class action related to short message service (SMS) technology
Law Firm: Tycko & Zavareei LLP
Case Name: Lathrop v. Uber Technologies, Inc.
Services Provided: Testifying expert for plaintiff
Disposition: Ongoing
Date: 2015

Expert Engagement:

Type of Matter: California Invasion of Privacy Act (Penal Code §§ 630) class action related to unlawful recording of telephone conversations
Law Firm: Keller Grover LLP and Law Offices of Scot D. Bernstein
Case Name: Roberts v. Wyndham International, Inc.
Services Provided: Testifying expert, expert reports, depositions for plaintiff
Disposition: Settled
Date: 2015

Expert Engagement:

Type of Matter: Intellectual property (patents) related to short message service (SMS) technology
Law Firm: Paul Hastings LLP
Case Name: Nova Transforma Technologies, LLC v. AT&T Mobility LLC
Services Provided: Consulting expert, USPTO affidavits for patent reexamination for defendant
Disposition: Settled
Date: 2015

Expert Engagement:

Type of Matter: Telephone Consumer Protection Act (TCPA), 47 U.S.C. § 227 related to unlawful cellular telephone calls
Law Firm: Maney & Gordon, P.A.
Case Name: Drew v. Ocwen Loan Servicing, LLC
Services Provided: Testifying expert, expert reports, depositions, trial testimony for plaintiff
Disposition: Plaintiff obtained statutory damages for willful TCPA violations
Date: 2015

Expert Engagement:

Type of Matter: Telephone Consumer Protection Act (TCPA), 47 U.S.C. § 227 class action related to unlawful cellular telephone calls
Law Firm: Parisi & Havens LLP
Case Name: Kleja v. Transworld Systems, Inc.
Services Provided: Testifying expert, expert reports for plaintiff
Disposition: Settled
Date: 2015

Expert Engagement:

Type of Matter: California Invasion of Privacy Act (Penal Code §§ 630) class action related to unlawful recording of telephone conversations

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Law Firm: Keller Grover LLP and Law Offices of Scot D. Bernstein
Case Name: McCabe v. Six Continents Hotels, Inc.
Services Provided: Testifying expert, expert reports, depositions for plaintiff
Disposition: Settled
Date: 2015

Expert Engagement:

Type of Matter: Material Breach of Contract
Law Firm: Hogan Lovells USA LLP
Case Name: IBM de México Comercialización y Servicios, S. de R.L. de C.V. adverse
Iusacell, S.A. de C.V.
Services Provided: Testifying expert, expert reports for IBM México
Disposition: Ongoing
Date: 2014 – 2016

Expert Engagement:

Type of Matter: Telephone Consumer Protection Act (TCPA), 47 U.S.C. § 227 class action
related to unlawful cellular telephone calls
Law Firm: Caddell & Chapman
Case Name: Hooker v. Sirius XM Radio, Inc.
Services Provided: Testifying expert for plaintiff
Disposition: Settled
Date: 2014 – 2016

Expert Engagement:

Type of Matter: Telephone Consumer Protection Act (TCPA), 47 U.S.C. § 227 class action
related to short message service (SMS) technology
Law Firm: Heyrich Kalish McGuigan, PLLC
Case Name: Gragg v. Orange Cab Company, Inc. et al
Services Provided: Testifying expert, expert reports, depositions for plaintiff
Disposition: Settled
Date: 2013 – 2016

Expert Engagement:

Type of Matter: Telephone Consumer Protection Act (TCPA), 47 U.S.C. § 227 class action
related to unlawful cellular telephone calls
Law Firm: McGuire Law, P.C.
Case Name: Valladares v. Blackboard, Inc.
Services Provided: Testifying expert for plaintiff
Disposition: Settled
Date: 2014 – 2015

Expert Engagement:

Type of Matter: Telephone Consumer Protection Act (TCPA), 47 U.S.C. § 227 related to
unlawful cellular telephone calls
Law Firm: Lemberg & Associates LLC
Case Name: Hamlett et al v. Santander Consumer USA Inc. et al

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Services Provided: Testifying expert, expert reports, depositions for plaintiff
Disposition: Settled
Date: 2014 – 2015

Expert Engagement:

Type of Matter: Telephone Consumer Protection Act (TCPA), 47 U.S.C. § 227 class action related to unlawful cellular telephone calls
Law Firm: Parisi & Havens LLP
Case Name: Lofton v. Verizon Wireless LLC
Services Provided: Testifying expert, expert reports for plaintiff
Disposition: Settled
Date: 2014 – 2015

Expert Engagement:

Type of Matter: Telephone Consumer Protection Act (TCPA), 47 U.S.C. § 227 class action related to short message service (SMS) technology
Law Firm: McGuire Law, P.C.
Case Name: Spencer v. AT&T Digital Life, Inc.
Services Provided: Testifying expert, expert reports, depositions for plaintiff
Disposition: Settled
Date: 2014

Expert Engagement:

Type of Matter: Telephone Consumer Protection Act (TCPA), 47 U.S.C. § 227 class action related to short message service (SMS) technology
Law Firm: Butsch Roberts & Associates, LLC
Case Name: In re: Life Time Fitness, Inc.
Services Provided: Consulting expert for plaintiff
Disposition: Settled
Date: 2014

Expert Engagement:

Type of Matter: Telephone Consumer Protection Act (TCPA), 47 U.S.C. § 227 class action related to unlawful cellular telephone calls
Law Firm: Morgan & Morgan, P.A.
Case Name: Cauchon v. Whetstone Partners, LLC, d/b/a eTitleLoan
Services Provided: Testifying expert, expert reports for plaintiff
Disposition: Settled
Date: 2014

Expert Engagement:

Type of Matter: Intellectual property (patents) related to short message service (SMS) technology
Law Firm: McGuireWoods LLP
Case Name: Comcast Cable Communications, LLC v. Sprint Communications Company L.P.
Services Provided: Consulting expert for defendant
Disposition: Ongoing
Date: 2014

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Expert Engagement:

Type of Matter: Telephone Consumer Protection Act (TCPA), 47 U.S.C. § 227 class action related to short message service (SMS) technology
Law Firm: Bock & Hatch, LLC
Case Name: Kozlow v. Hangtime, Inc.
Services Provided: Testifying expert, expert reports for plaintiff
Disposition: Settled
Date: 2014

Expert Engagement:

Type of Matter: Telephone Consumer Protection Act (TCPA), 47 U.S.C. § 227 class action related to unlawful cellular telephone calls
Law Firm: Parisi & Havens LLP
Case Name: In re Collecto, Inc.
Services Provided: Testifying expert, expert reports for plaintiff
Disposition: Ongoing
Date: 2014

Expert Engagement:

Type of Matter: Telephone Consumer Protection Act (TCPA), 47 U.S.C. § 227 class action related to unlawful cellular telephone calls
Law Firm: Edelson PC
Case Name: Birchmeier et al v. Caribbean Cruise Line, Inc. et al
Services Provided: Testifying expert, expert reports for plaintiff
Disposition: Settled
Date: 2014

Expert Engagement:

Type of Matter: Telephone Consumer Protection Act (TCPA), 47 U.S.C. § 227 class action related to short message service (SMS) technology
Law Firm: Keogh Law, Ltd.
Case Name: Johnson v. Yahoo! Inc.
Services Provided: Testifying expert, expert reports, depositions for plaintiff
Disposition: Ongoing
Date: 2014

Expert Engagement:

Type of Matter: Telephone Consumer Protection Act (TCPA), 47 U.S.C. § 227 class action related to short message service (SMS) technology
Law Firm: Jacobs Kolton, Chtd.
Case Name: Nunes v. Twitter, Inc.
Services Provided: Consulting expert for plaintiff
Disposition: Ongoing
Date: 2014

Expert Engagement:

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Type of Matter: Telephone Consumer Protection Act (TCPA), 47 U.S.C. § 227 class action related to unlawful cellular telephone calls
Law Firm: Manning Law, PLLC
Case Name: Manning v. Lendio, Inc.
Services Provided: Testifying expert for plaintiff
Disposition: Ongoing
Date: 2014

Expert Engagement:

Type of Matter: Telephone Consumer Protection Act (TCPA), 47 U.S.C. § 227 class action related to short message service (SMS) technology
Law Firm: The Law Offices of Joseph R. Manning, Jr.
Case Name: Vargem v. Tax Defense Partners, LLC
Services Provided: Testifying expert for plaintiff
Disposition: Ongoing
Date: 2014

Expert Engagement:

Type of Matter: Telephone Consumer Protection Act (TCPA), 47 U.S.C. § 227 class action related to unlawful cellular telephone calls
Law Firm: Steptoe & Johnson PLLC
Case Name: Cain v. Monitronics, International, Inc.
Services Provided: Consulting expert for defendant
Disposition: Ongoing
Date: 2014

Expert Engagement:

Type of Matter: Telephone Consumer Protection Act (TCPA), 47 U.S.C. § 227 class action related to short message service (SMS) technology and unlawful cellular telephone calls
Law Firm: Mantese Honigman Rossman and Williamson, P.C.
Case Name: Glassbrook v. Rose Acceptance, Inc. and First National Bank of America
Services Provided: Testifying expert, expert reports, depositions for plaintiff
Disposition: Ongoing
Date: 2014

Expert Engagement:

Type of Matter: Telephone Consumer Protection Act (TCPA), 47 U.S.C. § 227 class action related to unlawful cellular telephone calls
Law Firm: Kazerouni Law Group, APC
Case Name: Iniguez v. The CBE Group, Inc.
Services Provided: Testifying expert, expert reports for plaintiff
Disposition: Settled
Date: 2014

Expert Engagement:

Type of Matter: Telephone Consumer Protection Act (TCPA), 47 U.S.C. § 227 class action

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related to unlawful cellular telephone calls
Law Firm: Keogh, Cox & Wilson, Ltd.
Case Name: Hetherington v. Omaha Steaks, Inc. and Omaha Steaks International, Inc.
Services Provided: Testifying expert, expert reports for plaintiff
Disposition: Settled
Date: 2014

Expert Engagement:

Type of Matter: Telephone Consumer Protection Act (TCPA), 47 U.S.C. § 227 class action
related to unlawful cellular telephone calls
Law Firm: Potter Handy, LLP
Case Name: Potter v. Bank of America Corporation
Services Provided: Testifying expert, expert reports for plaintiff
Disposition: Settled
Date: 2014

Expert Engagement:

Type of Matter: Telephone Consumer Protection Act (TCPA), 47 U.S.C. § 227 class action
related to short message service (SMS) technology
Law Firm: Lemberg & Associates LLC
Case Name: Shiyen v. Lucille Roberts Health Clubs, Inc.
Services Provided: Testifying expert, expert reports for plaintiff
Disposition: Withdrawn
Date: 2014

Expert Engagement:

Type of Matter: Telephone Consumer Protection Act (TCPA), 47 U.S.C. § 227 class action
related to unlawful cellular telephone calls
Law Firm: Lemberg & Associates LLC
Case Name: Meyer v. Receivables Performance Management LLC
Services Provided: Testifying expert for plaintiff
Disposition: Settled
Date: 2014

Expert Engagement:

Type of Matter: Telephone Consumer Protection Act (TCPA), 47 U.S.C. § 227 class action
related to unlawful cellular telephone calls
Law Firm: McGuire Law, P.C.
Case Name: Murray v. Bill Me Later, Inc.
Services Provided: Consulting expert for plaintiff
Disposition: Settled
Date: 2014

Expert Engagement:

Type of Matter: Telephone Consumer Protection Act (TCPA), 47 U.S.C. § 227 class action
related to unlawful cellular telephone calls
Law Firm: Lemberg & Associates LLC

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Case Name: Creel v. GC Services, L.P.
Services Provided: Testifying expert, expert reports, depositions for plaintiff
Disposition: Settled
Date: 2014

Expert Engagement:

Type of Matter: Intellectual property (patents) related to short message service (SMS) technology and communication protocols

Law Firm: White & Case LLP
Case Name: Nokia Corporation v. Google Inc.
Services Provided: Testifying expert for defendant
Disposition: Settled
Date: 2014

Expert Engagement:

Type of Matter: Telephone Consumer Protection Act (TCPA), 47 U.S.C. § 227 class action related to short message service (SMS) technology

Law Firm: McGuire Law, P.C.
Case Name: Gomez v. Campbell-Ewald Company
Services Provided: Consulting expert for plaintiff
Disposition: Ongoing
Date: 2014

Expert Engagement:

Type of Matter: Telephone Consumer Protection Act (TCPA), 47 U.S.C. § 227 class action related to short message service (SMS) technology

Law Firm: Francis & Mailman, P.C.
Case Name: Dominguez v. Yahoo! Inc.
Services Provided: Testifying expert, expert reports, depositions for plaintiff
Disposition: Ongoing
Date: 2013 – 2016

Expert Engagement:

Type of Matter: Telephone Consumer Protection Act (TCPA), 47 U.S.C. § 227 class action related to short message service (SMS) technology

Law Firm: McGuire Law, P.C.
Case Name: Smith v. Microsoft Corporation
Services Provided: Testifying expert, expert reports for plaintiff
Disposition: Ongoing
Date: 2013 – 2016

Expert Engagement:

Type of Matter: Telephone Consumer Protection Act (TCPA), 47 U.S.C. § 227 class action related to unlawful cellular telephone calls

Law Firm: Lemberg & Associates LLC
Case Name: Horton v. Cavalry Portfolio Services LLC
Services Provided: Testifying expert, expert reports, depositions for plaintiff

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Disposition: Ongoing
Date: 2013 – 2014

Expert Engagement:

Type of Matter: Telephone Consumer Protection Act (TCPA), 47 U.S.C. § 227 class action related to short message service (SMS) technology
Law Firm: Law Office of Scott D. Owens, Esq. and Farmer, Jaffee, Weissing, Edwards, Fistos & Lehrman, P.L.
Case Name: Legg v. Voice Media Group, Inc.
Services Provided: Testifying expert, expert reports for plaintiff
Disposition: Dismissed
Date: 2013 – 2014

Expert Engagement:

Type of Matter: Telephone Consumer Protection Act (TCPA), 47 U.S.C. § 227 class action related to short message service (SMS) technology
Law Firm: Edelson LLC
Case Name: Sterk v. Path, Inc.
Services Provided: Testifying expert, expert reports for plaintiff
Disposition: Settled
Date: 2013 – 2014

Expert Engagement:

Type of Matter: Telephone Consumer Protection Act (TCPA), 47 U.S.C. § 227 class action related to short message service (SMS) technology
Law Firm: Wooten, Kimbrough & Normand, PA
Case Name: Murphy v. DCI Biologicals, LLC
Services Provided: Testifying expert, expert reports for plaintiff
Disposition: Settled
Date: 2013 – 2014

Expert Engagement:

Type of Matter: Telephone Consumer Protection Act (TCPA), 47 U.S.C. § 227 class action related to short message service (SMS) technology
Law Firm: Kazerouni Law Group, APC
Case Name: Sherman v. Yahoo! Inc.
Services Provided: Testifying expert, expert reports for plaintiff
Disposition: Dismissed
Date: 2013 – 2014

Expert Engagement:

Type of Matter: Telephone Consumer Protection Act (TCPA), 47 U.S.C. § 227 and Fair Debt Collection Practices Act (FDCPA) 15 U.S.C. 15 § 1692 related to unlawful cellular telephone calls
Law Firm: Collins & Story, PA
Case Name: Keen v. Delta Outsource Group, Inc.
Services Provided: Testifying expert, expert reports, depositions for plaintiff

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Disposition: Settled
Date: 2013 – 2014

Expert Engagement:

Type of Matter: Intellectual property (patents) related to short message service (SMS) technology and mobile banking
Law Firm: Panovia Group LLP
Case Name: N5 Technologies, LLC v. Capital One, N.A. et al
Services Provided: Testifying expert, expert reports, depositions for plaintiff
Disposition: Settled
Date: 2013 – 2014

Expert Engagement:

Type of Matter: Telephone Consumer Protection Act (TCPA), 47 U.S.C. § 227 and California's Unfair Competition Law, Cal. Bus. & Prof. Code § 17200 class action related to short message service (SMS) technology
Law Firm: Hartmann and Kananen
Case Name: Baird v. Sabre, Inc.
Services Provided: Testifying expert, expert reports for plaintiff
Disposition: Dismissed
Date: 2013 – 2014

Expert Engagement:

Type of Matter: Telephone Consumer Protection Act (TCPA), 47 U.S.C. § 227 class action related to short message service (SMS) technology and unlawful charging of cellular telephone customers
Law Firm: Edelson LLC
Case Name: Lee v. Stonebridge Life Insurance Company
Services Provided: Testifying expert, expert reports, depositions for plaintiff
Disposition: Settled
Date: 2012 – 2014

Expert Engagement:

Type of Matter: Intellectual property (patents) related to short message service (SMS) technology and multimedia message service (MMS) technology
Law Firm: Baker Botts LLP
Case Name: Intellectual Ventures LLC v. AT&T Mobility LLC, T-Mobile USA, Inc., Sprint Spectrum L.P., US Cellular Corporation
Services Provided: Testifying expert, expert reports for defendants
Disposition: Patent withdrawn from litigation
Date: 2012 – 2014

Expert Engagement:

Type of Matter: Telephone Consumer Protection Act (TCPA), 47 U.S.C. § 227 class action related to short message service (SMS) technology
Law Firm: Keogh Law, Ltd.
Case Name: Wanca v. LA Fitness International, LLC

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Services Provided: Testifying expert, expert reports, depositions for plaintiff
Disposition: Settled
Date: 2013

Expert Engagement:

Type of Matter: Telephone Consumer Protection Act (TCPA), 47 U.S.C. § 227 class action related to unlawful cellular telephone calls
Law Firm: Lemberg & Associates LLC
Case Name: Penn v. NRA Group, LLC
Services Provided: Consulting expert for plaintiff
Disposition: Ongoing
Date: 2013

Expert Engagement:

Type of Matter: Telephone Consumer Protection Act (TCPA), 47 U.S.C. § 227 class action related to unlawful cellular telephone calls
Law Firm: Lemberg & Associates LLC
Case Name: Reed v. GC Services LP
Services Provided: Consulting expert for plaintiff
Disposition: Settled
Date: 2013

Expert Engagement:

Type of Matter: Telephone Consumer Protection Act (TCPA), 47 U.S.C. § 227 class action related to short message service (SMS) technology
Law Firm: The Lavery Law Firm
Case Name: Volpe v. Caribbean Cruise Line, Inc.
Services Provided: Consulting expert for plaintiff
Disposition: Dismissed
Date: 2013

Expert Engagement:

Type of Matter: Washington Consumer Protection Act, RCW 19.86 and RCW 80.36.400 related to unfair business practices and unlawful cellular telephone calls
Law Firm: Williamson and Williams Law
Case Name: Kids Northwest v. First Data Corporation
Services Provided: Consulting expert for plaintiff
Disposition: Ongoing
Date: 2013

Expert Engagement:

Type of Matter: Telephone Consumer Protection Act (TCPA), 47 U.S.C. § 227 class action related to short message service (SMS) technology
Law Firm: George Rikos Law
Case Name: Van Patten v. Vertical Fitness
Services Provided: Testifying expert, expert reports for plaintiff
Disposition: Ongoing

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Date: 2013

Expert Engagement:

Type of Matter: Telephone Consumer Protection Act (TCPA), 47 U.S.C. § 227 and California Business and Professions Code § 17200 class action related to short message service (SMS) technology

Law Firm: Milberg LLP

Case Name: D'Agostino v. Jesta Digital, LLC (dba Jamster)

Services Provided: Testifying expert, expert reports for plaintiff

Disposition: Settled

Date: 2013

Expert Engagement:

Type of Matter: Telephone Consumer Protection Act (TCPA), 47 U.S.C. § 227 and Restrictions on Telemarketing, Telephone Solicitation, and Facsimile Advertising 47 C.F.R. § 64.1200(d)(3) class action related to unlawful cellular telephone calls

Law Firm: Burke Law Offices, LLC

Case Name: Benzion v. Vivint, Inc.

Services Provided: Testifying expert, expert reports, depositions for plaintiff

Disposition: Settled

Date: 2013

Expert Engagement:

Type of Matter: Telephone Consumer Protection Act (TCPA), 47 U.S.C. § 227 class action related to unlawful cellular telephone calls

Law Firm: Lemberg & Associates LLC

Case Name: Rutigliano v. Convergent Outsourcing, Inc.

Services Provided: Testifying expert, expert reports for plaintiff

Disposition: Ongoing

Date: 2013

Expert Engagement:

Type of Matter: Telephone Consumer Protection Act (TCPA), 47 U.S.C. § 227 class action related to short message service (SMS) technology

Law Firm: Kazerouni Law Group, APC

Case Name: Emanuel v. The Los Angeles Lakers, Inc.

Services Provided: Testifying expert, expert reports for plaintiff

Disposition: Dismissed

Date: 2013

Expert Engagement:

Type of Matter: Telephone Consumer Protection Act (TCPA), 47 U.S.C. § 227 class action related to short message service (SMS) technology

Law Firm: Kazerouni Law Group, APC

Case Name: Barani v. Wells Fargo Bank, N.A.

Services Provided: Consulting expert for plaintiff

Disposition: Settled

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Date: 2013

Expert Engagement:

Type of Matter: Intellectual property (patents) related to wireless calling party identification technology

Law Firm: K&L Gates LLP

Case Name: Cequent Inc. v. Apple Inc.

Services Provided: Consulting expert for plaintiff

Disposition: Settled

Date: 2013

Expert Engagement:

Type of Matter: Telephone Consumer Protection Act (TCPA), 47 U.S.C. § 227 class action related to unlawful cellular telephone calls

Law Firm: Donald A. Yarbrough, Esq.

Case Name: Mais v. Gulf Coast Collection Bureau, Inc.

Services Provided: Testifying expert, expert reports for plaintiff

Disposition: Dismissed on appeal

Date: 2013

Expert Engagement:

Type of Matter: Telephone Consumer Protection Act (TCPA), 47 U.S.C. § 227 class action related to unlawful cellular telephone calls

Law Firm: Donald A. Yarbrough, Esq.

Case Name: Manno v. Healthcare Revenue Recovery Group, LLC

Services Provided: Testifying expert, expert reports, depositions for plaintiff

Disposition: Settled

Date: 2013

Expert Engagement:

Type of Matter: Telephone Consumer Protection Act (TCPA), 47 U.S.C. § 227 class action related to short message service (SMS) technology and unlawful charging of cellular telephone customers

Law Firm: Law Office of Scott D. Owens, Esq.

Case Name: Wojcik v. Buffalo Bills, Inc.

Services Provided: Testifying expert, expert reports for plaintiff

Disposition: Settled

Date: 2012 – 2013

Expert Engagement:

Type of Matter: Telephone Consumer Protection Act (TCPA), 47 U.S.C. § 227 class action related to short message service (SMS) technology and unlawful charging of cellular telephone customers

Law Firm: Law Office of Scott D. Owens, Esq.

Case Name: Keim v. ADF Midatlantic, LLC (Pizza Hut)

Services Provided: Testifying expert for plaintiff

Disposition: Ongoing

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Date: 2012 – 2013

Expert Engagement:

Type of Matter: Telephone Consumer Protection Act (TCPA), 47 U.S.C. § 227 class action related to unlawful cellular telephone calls
Law Firm: Liner Grode Stein Yankelevitz Sunshine Regenstreif & Taylor LLP
Case Name: Connelly v. Hilton Grand Vacations Company, LLC
Services Provided: Testifying expert, expert reports, depositions for defendant
Disposition: Dismissed
Date: 2012 – 2013

Expert Engagement:

Type of Matter: Telephone Consumer Protection Act (TCPA), 47 U.S.C. § 227 class action related to short message service (SMS) technology
Law Firm: Kirby Law Group
Case Name: Agne v. Papa John's International, Inc. et al
Services Provided: Consulting expert for plaintiff
Disposition: Settled
Date: 2012

Expert Engagement:

Type of Matter: Telephone Consumer Protection Act (TCPA), 47 U.S.C. § 227 class action and NY GBL 399-P class action related to unlawful calls
Law Firm: Bellin and Associates LLC
Case Name: Tipoo v. Enhanced Recovery Company, LLC
Services Provided: Testifying expert for plaintiff
Disposition: Undisclosed
Date: 2012

Expert Engagement:

Type of Matter: Telephone Consumer Protection Act (TCPA), 47 U.S.C. § 227 class action related to unlawful calls
Law Firm: Burke Law Offices, LLC
Case Name: Bailey v. Household Finance Corporation et al
Services Provided: Testifying expert, expert reports for plaintiff
Disposition: Undisclosed
Date: 2011 – 2012

Expert Engagement:

Type of Matter: Telephone Consumer Protection Act (TCPA), 47 U.S.C. § 227 class action related to short message service (SMS) technology
Law Firm: Burke Law Offices, LLC
Case Name: Annoni v. FYISMS.com, LLC
Services Provided: Testifying expert, expert reports for plaintiff
Disposition: Undisclosed
Date: 2011 – 2012

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Expert Engagement:

Type of Matter: Telephone Consumer Protection Act (TCPA), 47 U.S.C. § 227 class action related to short message service (SMS) technology and unlawful charging of cellular telephone customers

Law Firm: KamberEdelson, LLC

Case Name: Schrock v. Wenner Media LLC

Services Provided: Consulting expert for plaintiff

Disposition: Undisclosed

Date: 2011

Expert Engagement:

Type of Matter: Telephone Consumer Protection Act (TCPA), 47 U.S.C. § 227 class action related to short message service (SMS) technology and unlawful charging of cellular telephone customers

Law Firm: Summit Law Group

Case Name: Kramer v. Autobytel, Inc. and B2Mobile, LLC

Services Provided: Consulting expert for defendant

Disposition: Settled

Date: 2011

Expert Engagement:

Type of Matter: Intellectual property (patents) related to wireless location based services (LBS)

Law Firm: Mintz, Levin, Cohn, Ferris, Glovsky and Popeo PC

Case Name: Emsat Geolocation Technology, LLC v. CellCo Limited Partnership (dba Verizon Wireless) et al

Services Provided: Testifying expert, USPTO affidavits for patent reexamination for plaintiff

Disposition: Undisclosed

Date: 2010 – 2011

Expert Engagement:

Type of Matter: Telephone Consumer Protection Act (TCPA), 47 U.S.C. § 227 class action related to unlawful calls

Law Firm: Keogh Law, Ltd.

Case Name: Griffith v. Consumer Portfolio Services, Inc.

Services Provided: Testifying expert, expert reports for plaintiff

Disposition: Undisclosed

Date: 2010 – 2011

Expert Engagement:

Type of Matter: Telephone Consumer Protection Act (TCPA), 47 U.S.C. § 227 class action related to unlawful calls

Law Firm: Keogh Law, Ltd.

Case Name: Dobbin v. Wells Fargo Auto Finance, Inc.

Services Provided: Testifying expert, expert reports for plaintiff

Disposition: Dismissed

Date: 2010 – 2011

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Expert Engagement:

Type of Matter: Intellectual property (patents) related to short message service (SMS) technology
Law Firm: Nelson Bumgardner Casto PC
Case Name: Celltrace LLC v. AT&T Inc. et al
Services Provided: Consulting expert for plaintiff
Disposition: Undisclosed
Date: 2010

Expert Engagement:

Type of Matter: California Constitution, Article VI, § 10, class action related to short message service (SMS) technology and unlawful charging of cellular telephone customers
Law Firm: KamberEdelson, LLC
Case Name: VanDyke v. Media Breakaway, LLC
Services Provided: Testifying expert, expert reports for plaintiff
Disposition: Settled
Date: 2009

Expert Engagement:

Type of Matter: Telephone Consumer Protection Act (TCPA), 47 U.S.C. § 227 class action related to unlawful calls
Law Firm: Gordon & Rees LLP
Case Name: Allen v. Rickenbacker Collection Services
Services Provided: Consulting expert for defendant
Disposition: Undisclosed
Date: 2009

Expert Engagement:

Type of Matter: Intellectual property (trademarks) related to short message service (SMS) technology
Law Firm: Fish & Richardson P.C.
Case Name: Cricket Communications, Inc. v. HipCricket, Inc.
Services Provided: Testifying expert, expert reports, depositions for plaintiff
Disposition: Undisclosed
Date: 2008 – 2009

Expert Engagement:

Type of Matter: California Constitution, Article VI, § 10, class action related to short message service (SMS) technology and unlawful charging of cellular telephone customers
Law Firm: KamberEdelson, LLC
Case Name: Albrecht v. mBlox, Inc. et al
Services Provided: Testifying expert, expert reports for plaintiff
Disposition: Settled
Date: 2008 – 2009

Expert Engagement:

Type of Matter: Telephone Consumer Protection Act (TCPA), 47 U.S.C. § 227 class action related to short message service (SMS) technology
Law Firm: Blim & Edelson, LLC

Randall A. Snyder
Curriculum Vitae

Case Name: Satterfield v. Simon & Schuster, Inc.
Services Provided: Testifying expert, expert reports for plaintiff
Disposition: Settled
Date: 2007 – 2009

Expert Engagement:

Type of Matter: Class action related to short message service (SMS) technology and unlawful charging of cellular telephone customers

Law Firm: KamberEdelson, LLC
Case Name: Walker v. Motricity, Inc.
Services Provided: Testifying expert, expert reports, depositions for plaintiff
Disposition: Settled
Date: 2008

Expert Engagement:

Type of Matter: Class action related to short message service (SMS) technology and unlawful charging of cellular telephone customers

Law Firm: KamberEdelson, LLC
Case Name: Rynearson v. Motricity, Inc.
Services Provided: Testifying expert, expert reports, depositions for plaintiff
Disposition: Settled
Date: 2008

Expert Engagement:

Type of Matter: California Constitution, Article VI, § 10, class action related to short message service (SMS) technology and unlawful charging of cellular telephone customers

Law Firm: KamberEdelson, LLC
Case Name: Reed v. Sprint Nextel Corporation
Services Provided: Testifying expert, expert reports for plaintiff
Disposition: Settled
Date: 2008

Expert Engagement:

Type of Matter: Class action related to short message service (SMS) technology and unlawful charging of cellular telephone customers

Law Firm: KamberEdelson, LLC
Case Name: Paluzzi v. CellCo Limited Partnership (dba Verizon Wireless) and mBlox. Inc.
Services Provided: Consulting expert for plaintiff
Disposition: Settled
Date: 2008

Expert Engagement:

Type of Matter: Class action related to short message service (SMS) technology and unlawful charging of cellular telephone customers

Law Firm: KamberEdelson, LLC
Case Name: Nava v. Predicto Mobile, LLC
Services Provided: Consulting expert for plaintiff

Randall A. Snyder Curriculum Vitae

Disposition: Settled
Date: 2008

Expert Engagement:

Type of Matter: Class action related to short message service (SMS) technology and unlawful charging of cellular telephone customers

Law Firm: KamberEdelson, LLC

Case Name: McFerren v. AT&T Mobility, LLC

Services Provided: Consulting expert for plaintiff

Disposition: Settled

Date: 2008

Expert Engagement:

Type of Matter: California's Unfair Competition Law, Cal. Bus. & Prof. Code § 17200 class action related to short message service (SMS) technology and unlawful charging of cellular telephone customers

Law Firm: KamberEdelson, LLC

Case Name: Guerrero v. MobileFunster, Inc.

Services Provided: Consulting expert for plaintiff

Disposition: Settled

Date: 2008

Expert Engagement:

Type of Matter: Computer Fraud and Abuse Act, 18 U.S.C. Article § 1030, class action related to short message service (SMS) technology and unlawful charging of cellular telephone customers

Law Firm: KamberEdelson, LLC

Case Name: Gray v. Mobile Messenger Americas, Inc.

Services Provided: Consulting expert for plaintiff

Disposition: Settled

Date: 2008

Expert Engagement:

Type of Matter: Class action related to short message service (SMS) technology and unlawful charging of cellular telephone customers

Law Firm: KamberEdelson, LLC

Case Name: Goddard v. Google, Inc.

Services Provided: Consulting expert for plaintiff

Disposition: Settled

Date: 2008

Expert Engagement:

Type of Matter: Class action related to short message service (SMS) technology and unlawful charging of cellular telephone customers

Law Firm: KamberEdelson, LLC

Case Name: Duffy v. Nevis Mobile, LLC

Services Provided: Consulting expert for plaintiff

Randall A. Snyder
Curriculum Vitae

Disposition: Settled
Date: 2008

Expert Engagement:

Type of Matter: Class action related to short message service (SMS) technology and unlawful charging of cellular telephone customers
Law Firm: KamberEdelson, LLC
Case Name: Criswell v. MySpace, Inc.
Services Provided: Testifying expert, expert reports for plaintiff
Disposition: Undisclosed
Date: 2008

Expert Engagement:

Type of Matter: Class Action Fairness Act of 2005, 28 U.S.C. §§ 1332, 1453 and 28 U.S.C. § 1367(a) class action related to short message service (SMS) technology and unlawful charging of cellular telephone customers
Law Firm: KamberEdelson, LLC
Case Name: Bradberry v. mBlox, Inc.
Services Provided: Consulting expert for plaintiff
Disposition: Settled
Date: 2008

Expert Engagement:

Type of Matter: California Constitution, Article VI, § 10, class action related to short message service (SMS) technology and unlawful charging of cellular telephone customers
Law Firm: KamberEdelson, LLC
Case Name: Ayers v. Media Breakaway, LLC
Services Provided: Testifying expert, expert reports for plaintiff
Disposition: Settled
Date: 2008

Expert Engagement:

Type of Matter: Intellectual property (patents) related to wireless location based services (LBS)
Law Firm: Hahn Loeser & Parks, LLC
Case Name: Emsat Geolocation Technology, LLC v. CellCo Limited Partnership (dba Verizon Wireless) et al
Services Provided: Consulting expert for plaintiff
Disposition: Undisclosed
Date: 2008

Expert Engagement:

Type of Matter: Class action related to short message service (SMS) technology and unlawful charging of cellular telephone customers
Law Firm: Blim & Edelson, LLC
Case Name: Valdez v. Sprint Nextel Corporation
Services Provided: Consulting expert for plaintiff
Disposition: Settled

Randall A. Snyder
Curriculum Vitae

Date: 2007

Expert Engagement:

Type of Matter: Telephone Consumer Protection Act (TCPA), 47 U.S.C. § 201 class action related to short message service (SMS) technology and unlawful charging of cellular telephone customers

Law Firm: Blim & Edelson, LLC

Case Name: Bradberry v. T-Mobile USA, Inc.

Services Provided: Testifying expert, expert reports for plaintiff

Disposition: Settled

Date: 2007

Expert Engagement:

Type of Matter: California Computer Crime Law, Cal. Pen. Code § 502 and California's Unfair Competition Law, Cal. Bus. & Prof. Code § 17200 class action related to short message service (SMS) technology

Law Firm: KamberEdelson, LLC

Case Name: Abrams v. Facebook, Inc.

Services Provided: Testifying expert, expert reports for plaintiff

Disposition: Settled

Date: 2007

Expert Engagement:

Type of Matter: Intellectual property (patents) related to short message service (SMS) technology

Law Firm: Paul Hastings LLP

Case Name: TeleCommunication Systems, Inc. v. Mobile365, Inc.

Services Provided: Testifying expert, expert reports, depositions, trial testimony for defendant

Disposition: Settled

Date: 2007



Wireless Research Services, LLC
Rate Sheet January 1, 2015

Wireless Research Services, LLC

2015 Rate Sheet

5931-1

ITEM	FEE
Non-refundable Retainer at Time of Engagement	\$4,000
Expert Witness Consulting, Expert Reports	\$450 per hour
Depositions, In-court Testimony	\$500 per hour
Required Travel, Lodging, Board and Administrative Expenses	\$1,000 per airline travel day plus actual incurred expenses
Invoicing	Payment due upon receipt
Penalty for Late Payments	10% of total invoice added after each 30 days late until full payment is received

By signing below and returning an executed copy to Wireless Research Services, LLC along with payment of the non-refundable retainer, you agree to the payment terms contained on this rate sheet.

Agreed to by: _____

Law firm/Company: Mazze Staker Katz & Freeman, LLC

Case Name: Meyer v. Bebe

Date: 7/6/15

EXHIBIT B



MobileMarketing

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Velti Buys Air2Web for \$19m

David Murphy | 26th September 2011

Deals



Mobile marketing firm **Velti** is buying **Air2Web**, which provides mobile CRM (mCRM) solutions in the US and India, for \$19m (£12.3m) in cash. Velti has also signed a definitive agreement to consummate the previously announced acquisition of the remaining interest in Chinese mobile ad exchange and network, **CASEE**, for \$8.4m.

Velti says it expects to keep in excess of \$12m of annualized revenue from the Air2Web acquisition, the majority of which is derived from recurring platform licensing, usage and performance fees. Velti anticipates that Air2Web will generate approximately \$3m in revenue and \$1m in EBITDA during the fourth quarter of 2011.

Velti will pay an up-front consideration of approximately \$8.4m for the remaining interest in CASEE, made up of \$3.9m in cash, and, at Velti's discretion at close, \$4.5m in cash or common shares of Velti plc. In addition, based upon CASEE's financial performance, Velti may be required to pay total contingent consideration of up to \$20.7m. Velti anticipates that CASEE will generate approximately \$1.5m in revenue during the fourth calendar quarter of 2011.

"Air2Web's mobile CRM platform is attracting and retaining many of the most marketing-savvy Fortune 1000 brands, including, among others, AT&T, Comcast, American Express, HSBC, Barclays Bank and Citigroup" notes Velti CEO, Alex Moukas. "Through this acquisition, Air2Web's customers can now leverage Velti's comprehensive mobile marketing platform and global capabilities to increase the scope, scale, geographic reach and overall effectiveness of their mobile marketing strategies."

Velti believes that Air2Web's technology and data reach are very complementary to its own mGage platform. The transaction deepens Velti's US footprint, and gives it improved access to carriers and verticals such as the financial services industry. In India, Air2Web expands Velti's footprint in the second largest mobile market by subscribers, providing Velti with a stronger foundation to continue to service the Indian market.

"The lasting partnerships we've built with trusted global brands have proven the strength, reliability and innovation of our mobile CRM platform and carrier-grade messaging infrastructure," says Air2Web president and CEO, Jay Sheth. "Together with Velti, I'm excited to say we now have the industry's leading end-to-end mobile marketing solution."

CASEE, founded in 2006, is the largest mobile ad exchange and mobile ad network in China. Velti acquired 33 per cent of CASEE in 2008, giving the company the ability to execute campaigns for global brands in China. CASEE CEO and co-founder, Xin Ye, will continue to lead Velti's efforts in China through CASEE.

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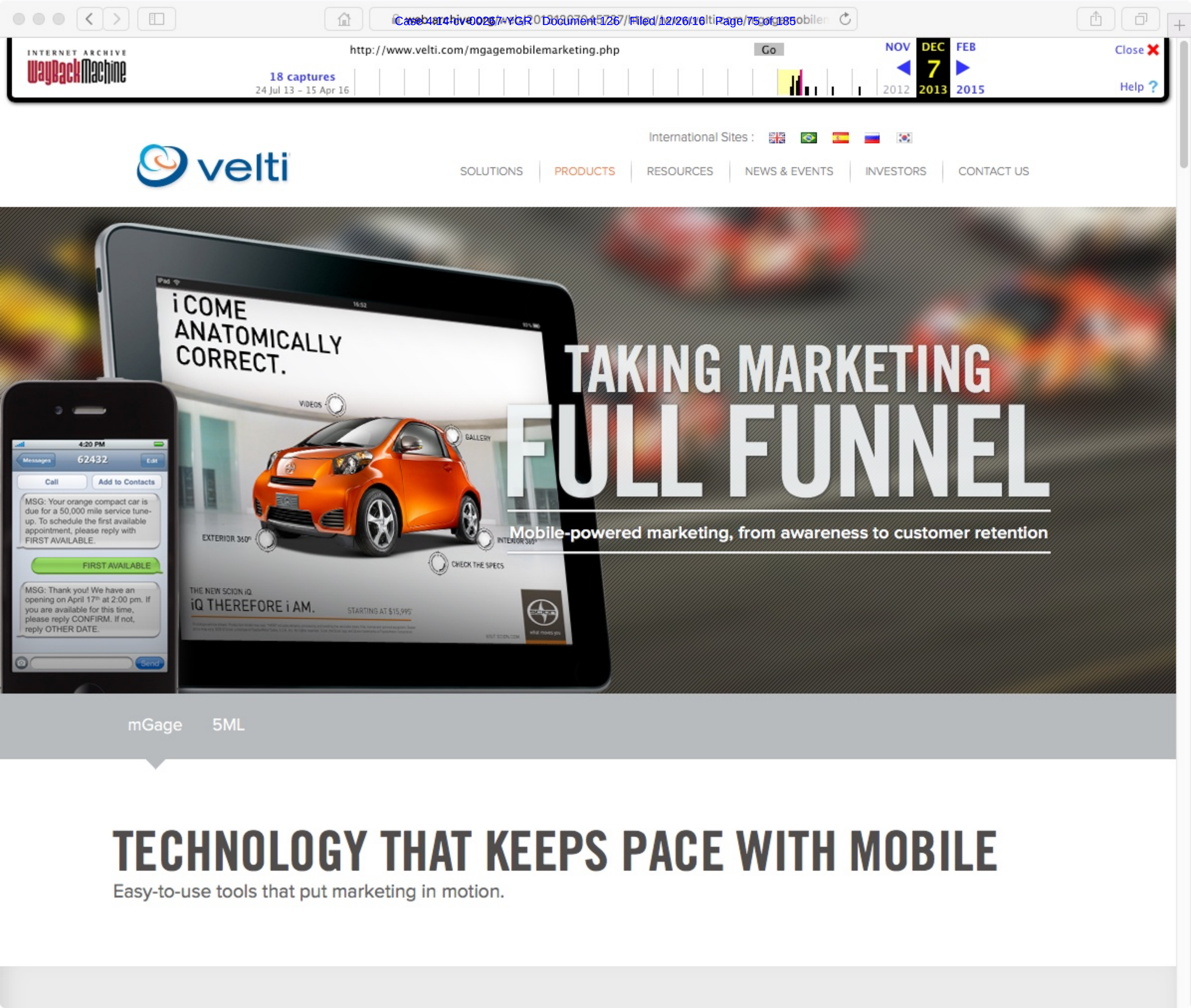
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EXHIBIT C



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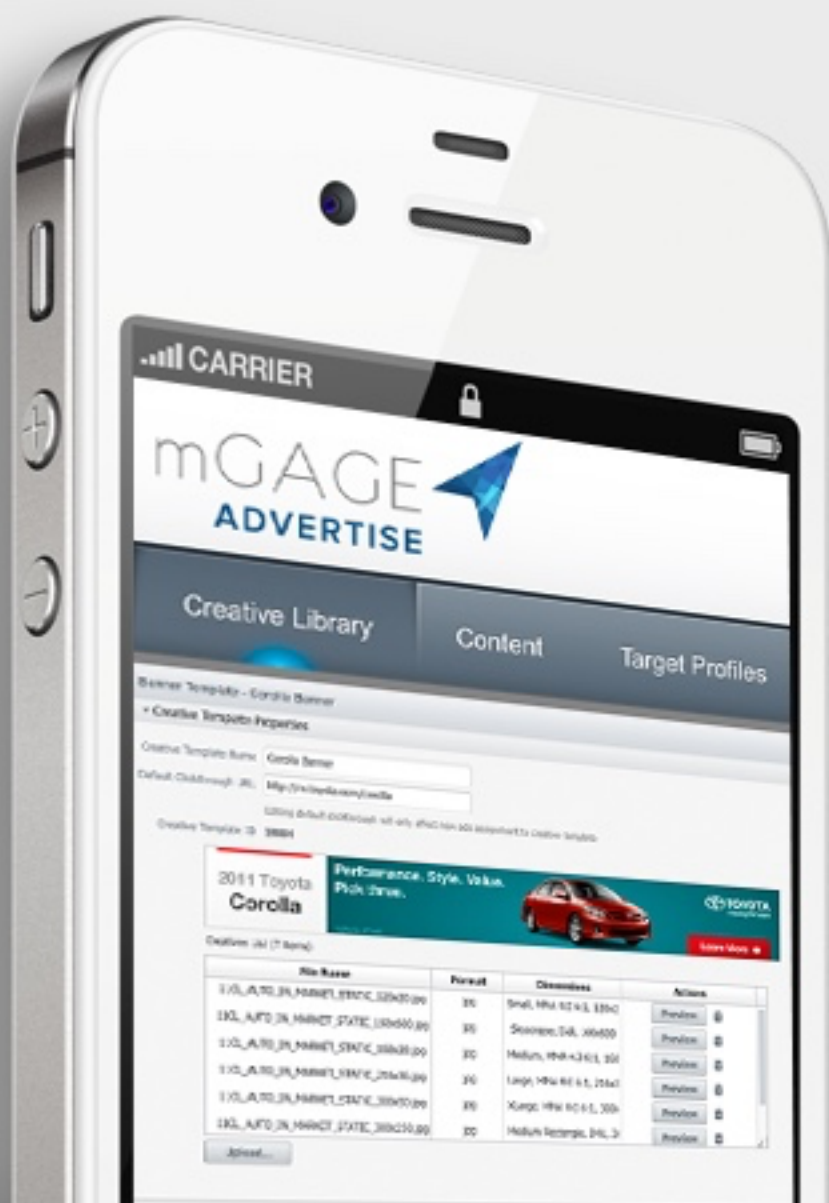
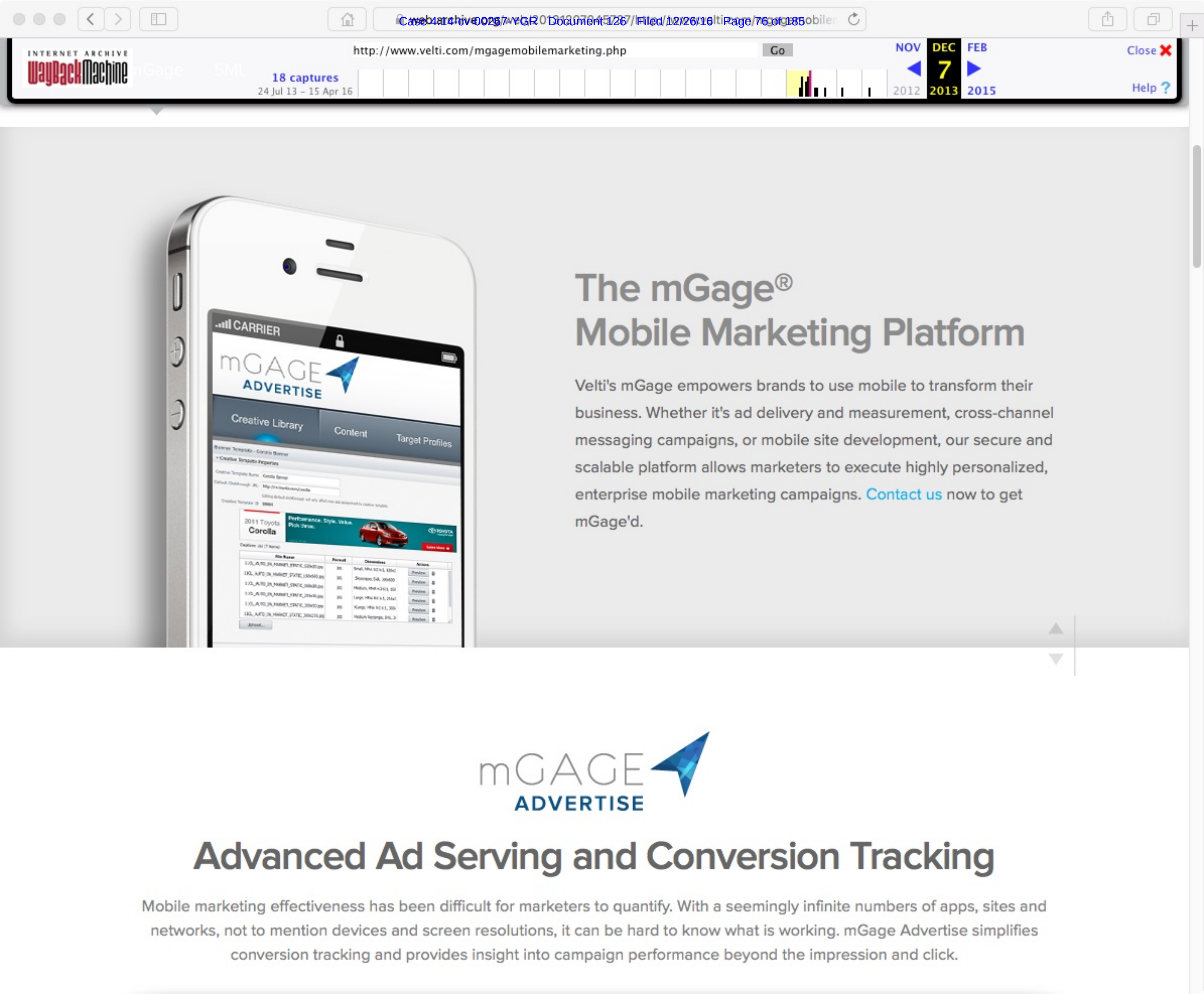
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TECHNOLOGY THAT KEEPS PACE WITH MOBILE

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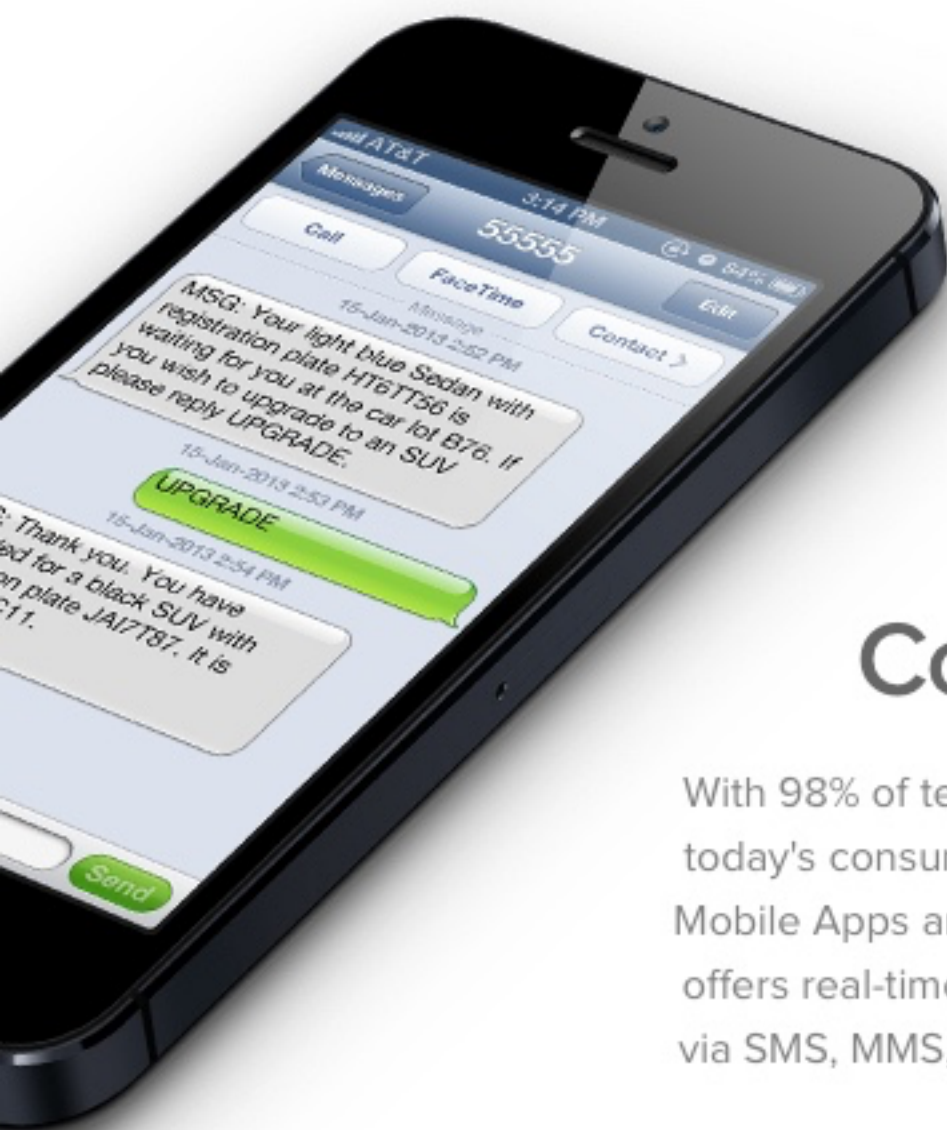
The mGage® Mobile Marketing Platform

Velti's mGage empowers brands to use mobile to transform their business. Whether it's ad delivery and measurement, cross-channel messaging campaigns, or mobile site development, our secure and scalable platform allows marketers to execute highly personalized, enterprise mobile marketing campaigns. [Contact us](#) now to get mGage'd.



Advanced Ad Serving and Conversion Tracking

Mobile marketing effectiveness has been difficult for marketers to quantify. With a seemingly infinite numbers of apps, sites and networks, not to mention devices and screen resolutions, it can be hard to know what is working. mGage Advertise simplifies conversion tracking and provides insight into campaign performance beyond the impression and click.



Personalized Customer Communication Messaging Platform

With 98% of text messages opened, mobile messaging is one of the most effective methods for engaging today's consumers. Three quarters of consumers prefer to receive offers and coupons via text rather than Mobile Apps and Web. mGage Communicate Pro, a robust, cloud-based carrier-grade messaging platform, offers real-time communication between you and your customers. It enables you to initiate a conversation via SMS, MMS, push notification, Passbook, email and social media channels. For more info, [download our Data Sheet](#) or [get in touch](#).



Multi-Modal Messaging

Use SMS, MMS, email or out-dial to effectively reach your customers. Send push notifications to anyone with your app installed on their phone.



Passbook & Microsites

Build Passbook passes and microsites for coupons with your brand elements that reach smartphones on all operating systems.



Multi-Step Programs

A powerful yet simple GUI allows you to build complex, intelligent interactions that deliver personalized and relevant responses to each mobile user.





Massively Mobile Promotions

Velti mGage Excite enables operators, agencies, media groups and brands to conduct robust and scalable mobile promotions on a massive scale. Manage your entire campaign lifecycle from inception to execution, complemented with best practices and unmatched scalability. Encourage customer participation and generate incremental revenue via communications based on your customers behavior and attributes. mGage Excite automatically leverages results to deploy a holistic promotional strategy for brands and operators worldwide. [Contact us](#) to take your promotions massively mobile.



Gamification

Spike user engagement, loyalty and stickiness via fun game mechanics with achievements, appointments, community collaboration, leaderboards, points, status and more.



Muti-Channel Opt-In

Maximize efficiency and customer experience by spanning multiple communication channels including SMS, traditional and mobile web, apps, IVR and more.



Automatic Optimization

Automatically identify and serve the best performing messages to increase playability while improving relevancy, uptake and redemption through intelligent targeting.

EXHIBIT D



MMA MEMBER LOGIN ?

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Air2Web

Company Name

Air2Web

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Address

Promenade II, 1230 Peachtree Street N.E., 12th Floor

Atlanta, GA 30309

Business Phone

+1.404.942.5300

Business Fax

+1.404.815.7708

Website Address

www.air2web.com

Company Information

Air2Web is the leading provider of wireless applications and gateway services, with wireless deployments in over 140 countries on more than 470 carrier networks. Air2Web customers are protected from the complexities of writing multiple applications for multiple devices and networks and benefit from Air2Web's direct connections into carrier networks for creating and executing cross-carrier mobile marketing campaigns. Sample customers include UPS, ABN AMRO, CSX Intermodal, CitiBank, ICICI, InterContinental Hotels Group, and the Weather Channel. For more information see www.air2web.com.

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Velti

Company Name

Velti

Logo



Address

Steuart Tower, 1 Market St Suite #600

San Francisco, CA 94105

General Inquiry Email Address

marketers@velt.com

Business Phone

415.315.3400

Website Address

www.velt.com

Company Information

Velti is the leading global provider of mobile marketing and advertising technology and solutions that enable brands, advertising agencies, mobile operators and media to implement highly targeted, interactive and measurable campaigns by communicating with and engaging consumers via their mobile devices. The Velti platform, called Velti mGage™, allows customers to use mobile and traditional media to reach targeted consumers, engage the consumer through the mobile Internet and applications, convert them into customers and continue to actively manage the relationship through the mobile channel. Velti is a publicly held corporation based in Jersey, and trades on the NASDAQ Global Select Market under the symbol VELT. For more information, visit www.velt.com.

Additional Office

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Velti releases "Mobile Whitebook 2013: Data, trends and best practice", in partnership with Econsultancy



June 26, 2013

Velti in partnership with Econsultancy publish their latest free mobile whitebook with truly actionable insight, assisting marketers to formulate an effective and accountable mobile strategy to target today's consumers.



Combined research from leading industry statistics, primary data and analytics from Velti's own platforms provides the latest insight into consumer preference, consumer habits and consumer devices. Also included:

- Latest insight into the changing business landscape.
- Best practice advice to mobile success.
- Case studies for Walkers, Samsung, and Vodafone.

[Download a free copy now.](#)

ABOUT

The MMA is the world's leading global non-profit trade association comprised of more than 800 member companies, from nearly fifty countries



EXHIBIT E



Global Code of Conduct

JULY 15, 2008

Introduction

The Mobile Marketing Association (“MMA”) believes that strong consumer privacy standards are essential to the success of mobile marketing by protecting mobile users from unwanted communications on their mobile devices.

It is only through industry support of strong privacy guidelines that the power of mobile marketing can reach its full potential.

Current internet marketing and privacy standards do not adequately address the specific challenges faced by marketers when marketing through the mobile channel. Strong mobile industry privacy principles will protect the mobile channel from abuses by unethical marketers, and limit consumer backlash and additional regulatory scrutiny.

Therefore, the following privacy principles (this “MMA Global Code of Conduct”, or “the Code”) are intended to guide companies within the mobile ecosystem, including but not limited to: advertisers, aggregators, application providers, carriers, content providers, and publishers, (collectively, “Mobile Marketers”), so that they can effectively, and responsibly, leverage the mobile channel for marketing purposes. The Code is designed to provide guidelines that all Mobile Marketers should consider and build their mobile programs around.

Note: The Code is not intended to regulate a wireless carrier's ongoing proprietary communication with its current base of subscribers which are already regulated by the applicable national and local law.

Summary

This MMA Global Code of Conduct updates the U.S. MMA Code of Conduct created in 2007, with support from the MMA APAC, LATAM and EMEA Board of Directors, and aligns the Code with generally accepted global privacy principles.

The Code describes privacy principles for Mobile Marketers that choose to use user information to market their products and services to those users via mobile devices.

The Code has five categories: Notice, Choice & Consent, Customization & Constraint, Security, and Enforcement & Accountability.

Notice

Mobile Marketers provide users with Notice. Notice is an easily understandable and quickly discoverable description of the terms and conditions of a marketing program. Notice should include information sufficient to permit a user to make an informed decision about his or her choices on how that information is used for that marketing program.

Notice is the fundamental principle in the MMA Privacy Code of Conduct. Mobile Marketers must inform the user of both the marketers' identity or products and services offered, and the key terms and conditions that govern an interaction between the marketer and the user's mobile device.

Choice & Consent

Mobile Marketers respect the right of the user to control which mobile messages they receive.

Mobile Marketers ask for and obtain consent by obtaining an explicit opt-in from the user for all mobile messaging programs. This can be accomplished via an SMS or MMS opt-in process, a voice response, website registration, other MMA recognized methods or other legitimate methods.

Mobile Marketers must implement consent (opt-in) for a specific messaging program. Consent is not carried into other programs unless the user has consented to such communications either 1) when they consented to the initial program or 2) upon the commencement of a subsequent messaging program.

Mobile Marketers must implement a simple termination (opt-out) process so that users can stop receiving messages, and users must be able to exercise their opt-out choice from any message. This opt-out must be functionally equivalent to the method used to obtain the opt-in and must be easily discoverable by users. Explanations on how to opt-out of multiple messaging programs must be provided on a reasonably frequent basis.

Customization & Constraint

Customization

Mobile Marketers ensure that mobile marketing reflects broad customer expectations in any applicable national marketplace. Marketing through the mobile channel is most effective when appropriately targeted, and user information collected for marketing purposes should be used to tailor such marketing to the interests of the user when available.

Mobile Marketers must take reasonable steps to ensure that user information they collect for the purpose of delivering targeted advertising is handled responsibly, sensitively and in compliance with applicable law.

Constraint

Mobile Marketers should target and limit mobile messages to that which users have requested. Mobile messages should provide value to the user. Value may be delivered in multiple ways, including: product and service enhancements, reminders, sweepstakes, contests, requested information, entertainment, or discounts.

Security

Mobile Marketers must implement reasonable technical, administrative and physical procedures to protect user information collected in connection with mobile marketing programs from unauthorized use, alteration, disclosure, distribution, or access.

Enforcement & Accountability

The MMA expects its members to comply with the MMA Global Code of Conduct and has incorporated the Code into

EXHIBIT F

U.S. Consumer Best Practices for Messaging

Version 7.0

V7.0 Publication Date: October 16, 2012

Effective Date: October 16, 2012

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Introduction: US Consumer Best Practices for Messaging

The Mobile Marketing Association (MMA) is the premier global non-profit trade association representing all players in the mobile marketing value chain. With more than 700 member companies, the MMA is an action-oriented organization with global focus, regional actions and local relevance. The MMA's primary focus is to establish mobile as an indispensable part of the marketing mix. The MMA works to promote, educate, measure, guide and protect the mobile marketing industry worldwide. The MMA's global headquarters are located in the United States and it has regional chapters including North America (NA), Europe, Middle East and Africa (EMEA), Latin America (LATAM), and Asia Pacific (APAC) branches.

The MMA Consumer Best Practices (CBP) for Messaging, for the United States market, provides a guide to implementing short code programs. This guideline document is a compilation of accepted industry practices, common wireless carrier policies, and regulatory guidance that have been agreed upon by representative member companies from all parts of the off-deck ecosystem.

The US Consumer Best Practices Committee for Messaging developed these guidelines in collaboration with representatives from the following member companies:

4INFO, Inc.

Cincinnati Bell Wireless

CTIA

Mobile Messenger

For more information, please contact:

Mobile Marketing Association

Email: mma@mmaglobal.com

www.mmaglobal.com



Introduction: US Consumer Best Practices for Messaging

Scope: Standard Rate, Premium Rate, and Free to End User

From a pricing perspective, there are three categories of short code programs. This document groups the standards according to these categories:

- Standard Rate – The consumer is charged standard messaging fees (per message, or decremented from their messaging bundle) when participating in the program. Premium fees are not charged.
- Premium Rate – The consumer is charged premium fees in addition to standard messaging fees applying.
- Free to End User (FTEU) – The consumer incurs no charges at all for participating in the program. The carrier waives standard message fees for these programs.

CTIA Audit Standards

CTIA Audit Standards were developed by a cross-carrier team in support of the CTIA Compliance Assurance Program. This Program has evolved to take a significant role in channeling common cross-carrier policies and defining compliance in the mobile market. The goal of the CTIA Audit Standards is to outline clear, objective, and executable rules against which program compliance can be evaluated. Rules are designed to meet the obligation of legal settlements entered into by the carriers, as well as to target deceptive practices that represent consumer harm.

References: MMA documents and links for reference purposes

The following documents provide additional sources of information and reference:

MMA Code of Conduct

<http://www.mmaglobal.com/codeofconduct.pdf>

MMA Glossary of Terms

<http://www.mmaglobal.com/glossary.pdf>

Mobile Marketing Association Website

<http://www.mmaglobal.com>

Telephone Consumer Protection Act (TCPA)

<http://www.the-dma.org/guidelines/tcpa.shtml>

CAN-SPAM

<http://www.fcc.gov/cgb/policy/canspam.html>

Common Short Code Administration

<http://www.usshortcodes.com>

COPPA

<http://www.ftc.gov/ogc/coppa1.htm>

CTIA Common Short Code Monitoring Playbook

http://www.wmcglobal.com/images/CTIA_playbook.pdf



Introduction: US Consumer Best Practices for Messaging

Recent Changes

Version 7.0

Below is a list of changes modified between version 6.1 of this document and the previous version 7.0

Alignment of MMA Consumer Best Practices with the CTIA Audit Standards

Removal of Cross Carrier Matrix for both Standard & Premium

Removal of Carrier specific playbooks



Cross Carrier Standards

Section 1: Standard Rate

Standard Rate Cross Carrier Guidelines

1.0 General Guidelines

	Guideline
1.0-1	At a minimum, programs (including short code, IVR and WAP) should be run in a manner that is congruous with the letter and spirit of the MMA Global Code of Conduct for Mobile Marketing. The Code of Conduct is located at: http://www.mmaglobal.com/codeofconduct.pdf
1.0-2	At all times, programs must be in accordance with applicable federal and state laws, rules and regulations. In addition, all programs must be in compliance with the CTIA Audit Standards. http://www.wmcglobal.com/images/CTIA_playbook.pdf
1.0-3	Wireless subscribers have a right to privacy.
1.0-4	Short codes are approved and provisioned based on the specific program submitted to the aggregator and carrier.
1.0-5	If the content provider wishes to run new, modified, or additional programs on the short code, they must submit the additional or modified program for approval to the aggregator/carrier.
1.0-6	For programs that use MMS, all keywords in this document should be supported via both SMS and MMS.

1.1 Messaging Frequency Guidelines

	Guideline
1.1-1	A "one-time" message program results in only one or two messages being delivered to the user at the time the interaction is initiated.
1.1-2	A "recurring" message program results in multiple messages being delivered to the user. This is also called a standard rate subscription program or an alert program.

1.2 Guidelines for Advertising Messaging Programs

	Guideline
1.2-1	When promoting programs, content providers should ensure that their advertising in all forms is clear and conspicuous regarding all terms and conditions associated with offers and adheres to all state and federal regulations.
1.2-2	CTIA audit standards do not permit use of the term free except for cross-carrier free-to-end-user programs. However, when there are no fees or charges other than standard messaging and data charges, synonyms (i.e. complimentary, promotional, no charge) are supported by all carriers and must be used with the phrase "Msg & Data Rates may apply". The communication stating that "Msg&Data Rates May Apply" should be added at the lower third of the commercial or advertisement when "free" appears in the audio or visual. The verbiage around the placement of "Msg&Data Rates May Apply" should be clear and conspicuous on the call to action/promotion/advertising and should NOT be deceptive in any nature nor lead to an indirect subscription of services. Illegible font sizes, font color, or presentment (including scrolling or moving graphics) and obscuring of the disclaimer "Msg&Data Rates May Apply" are prohibited.



Cross Carrier Standards

1.2-3	Program advertising or its placement must not be deceptive about the functionality, features, or content of the underlying program.
1.2-4	All advertising (print, TV, online, and radio) must include: <ul style="list-style-type: none"> • Product description • Program name • Product quantity • Link to full T&Cs containing privacy policy and help info • STOP instructions (in bold, for recurring only) • Additional carrier costs disclosure (Message and data rates may apply)
1.2-5	Instructions on using the HELP keyword (i.e. Text HELP for help) may be provided in lieu of full customer service contact information in advertising materials.
1.2-6	If space is not available for the full terms and conditions, the location where the full terms and conditions may be accessed without charge to the consumer must be disclosed (e.g. via a website address and/or toll free phone number).

1.3 Advertising to Children

	Guideline
1.3-1	Industry participants must comply with all applicable laws and industry standards that apply to advertising and marketing to children. This includes compliance with the FCC's Children's Television Act as it applies to the promotion of commercial websites, the FTC's Children's Online Privacy Protection Act (COPPA), FTC advertising regulations, Children's Advertising Review Unit (CARU) guidelines and various trade organization regulations such as those set forth by the MPAA and ESRB.
1.3-2	All industry participants are also expected to ensure that the products being marketed are appropriate for the intended audience. As such, products that would be considered "mature" or might be considered dangerous or harmful to children (including, for example, alcohol, Rx and OTC medication, household cleaners, etc.) should not be marketed to children.

1.4 Opt-In

	Guideline
1.4-1	Content providers must obtain opt-in approval from subscribers before sending them any SMS or MMS messages or other content from a short code.
1.4-2	Program flow and information must not be misleading in any way.
1.4-3	Recurring standard rate programs require a single opt-in.
1.4-4	When opt-in to a recurring program occurs via the web or other non-mobile point of origination, the content provider must obtain verification that the subscriber is in possession of the handset being opted-in to the service.
1.4-5	For recurring standard rate programs, subscribers should indicate their willingness to participate in a program and receive messages from the program as follows:
1.4-6	<ol style="list-style-type: none"> 1. Subscriber initiates opt-in to a recurring Standard Rate Program by responding to a call to action (CTA): <ol style="list-style-type: none"> i.) Subscriber may send a Mobile Originated (MO) message from their handset to the short code. ii.) Subscriber may initiate opt-in from a web interface iii.) Subscriber may initiate opt-in from a WAP interface iv.) Subscriber may initiate opt-in from an IVR system 2. Program responds with pertinent phone, program, and contact information and handset verification steps, if required.



Cross Carrier Standards

1.4-7	If web-based opt-in is used for a standard rated campaign, the use of a PIN code, although not required, is suggested to confirm possession of the handset.
1.4-8	Requirements for the PIN code (or Reply Yes) MT, in cases where it is used are: <ul style="list-style-type: none"> • Program sponsor (Defined as the program name, company name or brand associated with the campaign.) • the PIN code sent to the subscriber for confirmation, which may be placed anywhere in the message • Customer support information (HELP) • Frequency of messaging • Additional carrier costs (e.g. Msg&Data Rates May Apply) • Opt-out information (STOP) does not need to be in the initial PIN (or Reply Y) MT message.
1.4-9	After opt-in to a recurring program, a confirmation Mobile Terminating (MT) message must be sent to the subscriber containing, at minimum, the following information: <ul style="list-style-type: none"> a) Service description b) Program Sponsor c) Additional carrier costs (e.g. Msg&Data Rates May Apply) d) Frequency of messaging e) Customer support information (HELP) f) Opt-Out information (STOP)
1.4-10	This opt-in applies only to the specific program a subscriber is subscribed to and should not be used as a blanket approval to promote other programs, products, and services. However, after the subscriber has been given the complete details about the opt-in scope, the subscriber may opt-in to receive other messages. A content provider may, however, communicate with existing opted-in subscribers through non-premium messages that a) notify subscribers of updates to their existing service or b) are part of a retention program for that particular service. Directions to unsubscribe from these messages must be clearly available with the delivery of each message.
1.4-11	Selling mobile opt-in lists is prohibited.
1.4-12	When a subscriber ports his/her telephone number between carriers, he/she is required to re-opt-in to all short code programs.

1.4.1 Program Messages

	Guideline
1.4.1-1	For both recurring and one-time message programs, no compliance language is required in program content MTs. (STOP, HELP, Msg&Data Rates May Apply are not required to be in program content messages.)
1.4.1-2	Reminder messages are not required for one-time message programs.
1.4.1-3	When used, reminder messages must include the following: <ul style="list-style-type: none"> • Identity of program sponsor • Short description of program—For example, Giants Score Alerts. • Frequency of messaging • HELP information – For example, Reply HELP for HELP • Opt-Out information – For example, Reply STOP to Cancel • Pricing terms for the program—Msg&Data Rates May Apply
1.4.1-4	Within MMS messages, the following types of third party ads are allowed: text, picture, audio, and video. Ads may be inserted prior to, within the content being sent or following the content of the MMS Message.



Cross Carrier Standards

1.5 Program Termination, STOP and Opt Out

	Guideline
1.5-1	Content providers must offer subscribers the opportunity to cancel the service at any time. The following rules govern program opt-out:
1.5-2	<p>A subscriber must be able to stop participating and receiving messages from any program by sending STOP to the short code used for that program.</p> <ul style="list-style-type: none"> • END, CANCEL, UNSUBSCRIBE or QUIT should also be opt-out key words for all programs; however, content providers should feature the word STOP in their advertising and messaging. Messaging content providers must process a stop message from a subscriber regardless of the keyword STOP's case sensitivity • The STOP keyword must work in the native language of the program. In a non-English program, the English keyword must not return an error message. • Short code programs must ignore subsequent non-keyword text included in STOP MOs. • Short codes running MMS programs should handle the STOP keyword correctly, regardless whether the subscriber sends the keyword via MMS or SMS. • When sent, these words cancel the subscriber's previous opt-in for messaging.
1.5-3	<p>If the subscriber is participating in multiple programs on the short code, there are two options for the content provider when a subscriber sends an opt-out request:</p> <ol style="list-style-type: none"> 1) The content provider sends a menu of the programs the subscriber is subscribed to and the subscriber has the responsibility to reply with the specific keyword to the specific program they would like to be opted out of. To ensure subscribers also have a way to opt-out of all programs within this menu, STOP ALL must be added to the menu choices. The stop menu message does NOT need to contain <ol style="list-style-type: none"> i) "Msg&Data Rates May Apply" ii) Sponsor contact information. 2) Or if the subscriber sent STOP or STOP ALL to the short code, they are opted-out of all programs they were enrolled in on that short code.
1.5-4	When STOP, or any of the opt-out keywords above, is sent to a program, the program must respond with an MT message, whether or not the subscriber is subscribed to the program.
1.5-5	When the user is subscribed to a recurring program, an MT message confirming the opt-out must be sent to the subscriber. This must not be a premium message. This message should reference the specific program the subscriber has opted-out from and indicate that no further messages will be sent. No further messages should be sent to the subscriber from this program, including marketing messages for any related or unrelated programs.
1.5-6	When the user is not currently subscribed to a recurring program, or the program is a one-time program where the subscriber will not receive additional messages, then an MT message may be sent that only confirms that the user is not subscribed to any programs on this short code and indicates that no further messages will be sent.
1.5-7	This STOP command functionality requirement applies to all programs, including one-time use programs where the subscriber will not receive additional messages. This is to avoid subscriber confusion around the use of the STOP command.
1.5-8	The STOP command should never result in an error being sent back to the subscriber.



Cross Carrier Standards

1.5-9	Any IVR system that offers the possibility to opt-in to a mobile service must also offer the possibility to opt-out. This should be available through the IVR, customer service, a web site, or SMS.
1.5-10	The content provider must record and store all opt-out transactions.
1.5-11	If a user is inactive (no program MTs or MOs exchanged) in any recurring message program for eighteen months, the opt-in should expire. At that time, it is permissible to send the subscriber one final MT message notifying them that his/her username and other subscription information will be deleted from the program. No messages to the subscriber after the expiration are permitted unless the subscriber re-opts-in to the program.

1.6 Program Short Code Transfer

	Guideline
1.6-1	A subscriber to a recurring program may be transferred to a new short code without a new opt-in, as long as the content and purpose of the alerts remain the same as what the subscriber opted-in to receive and the content provider has not changed. Under these circumstances, the following notifications must be provided:
1.6-2	The subscriber must receive notice on the short code they originally opted into that the program will be moving to a new short code. This message must include instructions on how to opt-out of the program. This should be the last message sent by the program on the old short code.
1.6-3	When the program initiates on the new short code, the first alert the subscriber receives must remind subscribers of the short code change and include instructions on how to opt-out of the program.
1.6-4	Any alert list transferred or sold to a new content provider for the purposes of remarketing is considered SPAM and is grounds for short code de-provisioning.

1.7 Customer Care and HELP Guidelines

	Guideline
1.7-1	Help messaging commands, phone numbers, URLs, and email addresses should result in the subscriber receiving help with his issue. Dead ends that do not provide a manner in which the subscriber may resolve his issue are not acceptable.
1.7-2	A subscriber can receive help information by sending the keyword HELP to any program. The HELP keyword should work on all short code programs. HLP is optional for HELP, but not required. <ul style="list-style-type: none"> The HELP keyword sent by the consumer cannot be case sensitive For short codes running MMS programs, a help response should be returned whether the subscriber sends in HELP to the short code via MMS or SMS The HELP keyword must work in the native language of the program. In a non-English program, the English keyword must not return an error message.
1.7-3	To help subscribers understand their participation, each program should respond with the program details listed below when the subscriber sends the keyword HELP to the program short code.
1.7-4	<ul style="list-style-type: none"> Identity of program sponsor—This is defined as the program name, company name, or brand associated with the campaign.
1.7-5	<ul style="list-style-type: none"> Customer support info — Either a toll-free number, Web address, or e-mail address. Note that Sprint requires a toll free number for all programs and T-Mobile requires a URL for all programs.
1.7-6	<ul style="list-style-type: none"> Service description of program — For example, Fun Stuff Trivia.



Cross Carrier Standards

1.7-7	<ul style="list-style-type: none"> Opt-out information
1.7-8	<ul style="list-style-type: none"> Program frequency
1.7-9	<ul style="list-style-type: none"> Pricing Information – Msg&Data Rates May Apply
1.7-10	<p>If the short code has multiple programs (keywords) on the same short code, the application should respond in one of two ways:</p> <ol style="list-style-type: none"> 1) If the subscriber has opted in to only one program, the application should supply the information for the program the subscriber is opted-in to. 2) If the subscriber has opted-in to multiple programs, the application should present a multiple-choice question asking the subscriber what program they would like help on. <p>The first help menu does NOT need to include:</p> <ul style="list-style-type: none"> “Msg&Data Rates May Apply” STOP, Or Sponsor Contact Information <p>The menu should contain a question asking what the subscriber seeks help with and a list of options for the user to get help on. Once the user has identified the program they want help with, the appropriate help information must be in the subsequent MT.</p>
1.7-11	When HELP is sent to a program, the program must respond with an MT message, whether or not the subscriber is subscribed to the program, and whether the program is a subscription program or not. HELP must always result in a response.
1.7-12	Subscribers must be able to reach customer service through the IVR for assistance with an IVR mobile program.

1.8 Customer Record Maintenance

	Guideline
1.8-1	To the extent that carriers supply deactivation and recycled number information, content providers and aggregators are required to have appropriate and effective systems and processes for managing deactivation and recycled number information. These systems and processes should be designed to ensure that mobile content programs subscribed to by previous holders of a specific phone number do not continue to be delivered or billed to a subsequent holder of that number when it is reassigned. Content providers and aggregators must process deactivation information within three business days of receipt.
1.8-2	Independent of method of entry (SMS, MMS, Web, WAP, IVR) opt-in and opt-out records - including single, double and triple opt-in records – should be retained from the time the subscriber opts-in until a minimum of six months after the subscriber has opted-out of the program (minimum opt-in archiving period is one calendar year). These records should be made available to the aggregator or carrier upon request.
1.8-3	The content provider is responsible for tracking program opt-in information by subscriber.

1.9 Terms and Conditions

	Guideline
1.9-1	Terms and Conditions at a minimum must contain the following:
1.9-2	<ul style="list-style-type: none"> STOP instructions in BOLD lettering
1.9-3	<ul style="list-style-type: none"> HELP instructions in BOLD lettering



Cross Carrier Standards

1.9-4	<ul style="list-style-type: none"> Program sponsor information, defined as the program name, company name, or brand associated with the campaign
1.9-5	<ul style="list-style-type: none"> For standard rate programs: "Msg&Data Rates May Apply". The text "standard rates may apply" is no longer being used. To better inform consumers that message and data charges may be applicable the new terminology above has been adopted. Different forms of the above text include: Message and Data Rates May Apply, Msg&data rates may apply, Msg&data rates may apply, Msg&DataRatesMayApply.
1.9-6	<ul style="list-style-type: none"> Customer Service Contact Information: either a toll-free number, a web submission form or an email address.
1.9-7	<ul style="list-style-type: none"> Guidance on the frequency with which the subscriber may expect to receive messages for the duration of the program. Note that for many applications, this cannot be precisely predetermined by the content provider. In this case, the guidance should relate to the expected message frequency under normal circumstances. Note that CTIA audit standards accept "recurring" or "periodic" for product quantity for standard rate.
1.9-8	All material terms and conditions of the program should be clearly communicated.
1.9-9	If a checkbox is used to indicate a consumers' acceptance of the terms and conditions, it is not permissible for the checkbox to be pre-checked.

1.10 Tobacco & Alcohol Programs

	Guideline
1.10-1	Hard alcohol programs should only be marketed in locations that have age verification (bars, nightclubs).
1.10-2	Alcohol marketing should not directly promote the use of or consumption of alcohol.
1.10-3	Any reference to the abuse of alcohol, drugs, tobacco or other controlled substances is strictly prohibited. This includes verbal and non-verbal actions in which a person could conclude that promotion of drug use is intended.
1.10-4	Tobacco companies engaging in promotional mobile marketing programs, defined as programs that DO NOT directly advocate or promote the use or consumption of tobacco, must maintain their commitment to responsible marketing via age verification practices compatible with mobile program opt-in methods.
1.10-5	Any program brief submitted for carrier approval on behalf of a tobacco brand must illustrate the integration of electronic age verification methods (use of third party vendors to confirm legal age and identity) into the program opt-in process.
1.10-6	Program opt-in is only completed once the mobile subscriber has been verified as an adult tobacco consumer.

1.11 Sweepstakes & Contests

Sweepstakes and contests, including those conducted on the mobile platform, are among the most regulated of marketing tactics.

Mobile Sweepstakes and Contests definitions:

Sweepstakes - A sweepstakes is a legal game that includes a prize, and a game of chance. No consideration is allowed.

Contest - A contest is a promotional mechanism that includes a prize, and a game of skill. Consideration is allowed, but there cannot be any element of chance.



Cross Carrier Standards

Lottery - A lottery is a game that includes a prize, a game of chance, and consideration. Federal legislation and State laws govern (and disallow) all lotteries for promotional purposes.

Consideration - Although the definition of consideration varies from state to state, generally, consideration means that a willing participant is required to purchase something or pay for access to be eligible to enter a game.

	Guideline
1.11-1	Consideration may be monetary or non-monetary (an example of non-monetary consideration is a sweepstakes where the participant is required to provide detailed consumer information to be eligible).
1.11-2	All sweepstakes must offer a free Alternative Method Of Entry (AMOE). Allowing participants to enter via mail, internet, fax or IVR via a toll free number are all forms of AMOE, but are not the only forms of free AMOE.
1.11-3	Anyone running a sweepstakes should seek legal guidance when drawing up rules.



Standard Rate Examples

Advertising (Call to Action) Examples

Cross Carrier Examples: Legend

Web, TV, In-Store,
Promotional Poster

Text Message

Mobile Web/ WAP

CCS-SR-EG- 1 Standard Rate Print Advertising Example

Additional costs →
Terms & Conditions →
Opt-Out Info →

Get Daily Recipes via text message from Bonjour Farms!

Get a link to a recipe of the day, featuring fresh, seasonal, local foods. Text FOOD to 12345 to subscribe.

Message and Data Rates May Apply

Terms & Conditions at www.text123.com/terms

To stop text STOP to 12345

CCS-SR-EG- 2 Standard Rate Television, Radio, or Audio Advertising Example

"Get breaking news alerts from KGO Radio, just text NEWS to 12345. Message and data rates may apply."

CCS-SR-EG- 3 Standard Rate Web Advertising Example

Frequency →

Additional costs →
Terms & Conditions →
Opt-Out Info →
Support Information →

Get Daily Recipes via text message from Bonjour Farms!

Get a link to a recipe of the day, featuring fresh, seasonal, local foods. One message per day.

Enter your phone number to subscribe now:

Msg&Data Rates May Apply

Terms & Conditions at www.text123.com/terms

To stop text STOP to 12345.

For help, reply HELP to 12345.



Standard Rate Examples

Opt-In Examples

Cross Carrier Examples: Legend

Web, TV, In-Store,
Promotional Poster

Text Message

Mobile Web/ WAP

CCS-SR-EG- 4 Standard Rate Single Opt In – Recurring Alert Subscription

Call to Action:

- Program sponsor → Upmobile Ski Alerts!
- Service Description → Send us the resort name, we'll send you the snow conditions. Txt 'Mammoth' to 12345 to receive ongoing alerts for Mammoth resort.
- Frequency of Messaging → Get 10 msgs/month.
- Customer Support Info → Text HELP for help.
- Opt Out Info → To stop text STOP.
- Additional Carrier Costs → Msg&Data Rates May Apply.
- Terms & Conditions → T&Cs avail at www.mammoth.com/mobile.

The following is advertised:

Step 1:

User responds to Call to Action and sends an MO "Mammoth"

Step 2: Confirmation MT

User receives the following MT Message:

- Service description → Welcome to Upmobile: Mammoth Ski Alerts!
- Additional carrier costs → Msg&Data Rates May Apply.
- Frequency of messaging → Get 2 msgs/week.
- Customer Support Info → Reply HELP for help.
- Opt Out Info → Reply STOP to cancel.

Step 3: Alert MT

User receives the following MT Message:

- Alert → UpMobile: Mammoth Ski Alert @ 5pm PST! 12" of fresh powder fell! Roadways are open with light traffic.

Step 4: Renewal Reminder (OPTIONAL, except Sprint)

User receives the following MT Message:

- Service description → REMINDER: Subscribed to Upmobile: Mammoth Ski Alerts!
- No Charge, but Msg&Data Rates May Apply.
- Additional carrier costs → Reply HELP for help
- Customer Support Info → Reply STOP to cancel.
- Opt Out Info →



Standard Rate Examples

CCS-SR-EG- 5 Standard Rate Single Opt In – One Time Message

Call to Action:

Program sponsor →	The following is advertised: Upmobile Ski Alerts!
Service Description →	Send us the resort name, we'll send you the snow conditions. Txt 'Mammoth' to 12345 to receive an alert for Mammoth Resort.
Additional Carrier Costs →	Msg&Data Rates May Apply.
Terms & Conditions →	T&Cs avail at www.mammoth.com/mobile .

Step 1:

User responds to Call to Action and sends an MO "Mammoth"

Step 2: Alert MT

User receives the following MT Message:

Program sponsor →	UpMobile / Mammoth Mountain:
Content →	12" of fresh powder fell! Roadways are open with light traffic.

CCS-SR-EG- 6 Invalid Keyword Example Message

Example of optional response message to be sent when an invalid keyword MO is received.

User receives the following Mobile Terminating (MT) Message:

Program sponsor →	Farm League Baseball Alerts
Unrecognized keyword, HELP →	Sorry, we did not recognize that keyword. Text HELP for HELP.
Opt-Out Info →	Reply STOP to cancel receiving Farm League Baseball Alerts.



Standard Rate Examples

CCS-SR-EG- 7 Reminder Example Message

Example of reminder message for recurring message programs. *NOTE: This message may be required by some carriers while optional for others.*

	User receives the following Mobile Terminating (MT) Message:
Sponsor & description→	Reminder! You are subscribed to Farm League Baseball Alerts.
Frequency→	Up to 30 messages per month.
HELP→	Text HELP for HELP.
Opt-Out Info→	Reply STOP to cancel.
Pricing→	Msg&Data Rates May Apply

CCS-SR-EG- 8 Standard Rate IVR Opt In

Call to Action

	The following is advertised:
Program sponsor →	WOD: Weather on Demand.
Service Description →	Call 888-222-2222 to get current weather for your area sent to your phone. Dial 0 for help.
Customer Support Info →	Txt HELP for help to 12345.
Opt Out Info →	To stop txt STOP to 12345.
Additional Carrier Costs →	Msg&Data Rates May Apply.

Step 1: User responds to Call to Action User calls 888-222-2222 [Mobile subscriber calls and is prompted to select SMS to phone]

Step 2: Mobile Content MT User receives the following MT
Message:

Mobile Content →	WOD: Partly sunny with chance of showers in late afternoon. Highs in the 70 during the day, and 62 at night.
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Standard Rate Examples

STOP Message Examples

CCS-SR-EG- 9 Stop (Single Service)

User receives the following
Mobile Terminating (MT)
Message:

Program sponsor →	Farm League Baseball Alerts.
Discontinuation of Service →	You have opted out. You will not receive additional messages.

CCS-SR-EG- 10 Stop (Multiple Services)

Step 1: User sends STOP Mobile
Originating (MO) Msg

Step 2: Help menu MT response to a
STOP MO from a user

Program sponsor →	Farm League Baseball: which service to stop?
STOP ALL →	STOP ALL or
Option A →	For Sports Reply STOP SPORT to cancel
Option B →	For Horo Reply STOP HORO to cancel

Step 3: User responds STOP SPORT.

Program sponsor →	You will receive no more messages from Farm League Baseball:
	Sports service.
Discontinuation of Service →	You have canceled the service.

Step 4: User responds STOP HORO.

Program sponsor →	You will receive no more messages from Farm League Baseball: horoscope service.
Discontinuation of Service →	You have canceled services.



Standard Rate Examples

HELP Message Examples

CCS-SR-EG- 11 HELP Message, Single Service

Step 1: User sends HELP Mobile Originating (MO) Msg

Step 2: Help MT response:

Program sponsor →	Farm Baseball Alerts!
Service Description →	Text us your zip, we send local game day weather.
Additional Carrier Costs →	Msg&Data Rates May Apply.
Frequency of Messaging →	4 msgs/mo
Customer Support Info →	Contact: flb.com/help or 800-888-8888.
Opt Out Info →	Reply STOP to cancel.

CCS-SR-EG- 12 Help Message, Multiple Services

Step 1: User sends HELP Mobile Originating (MO) Msg

Step 2: Help menu MT response to a HELP MO from a user

Program sponsor →	Farm Baseball: which service would you like help on?
Option A →	For Sports Reply HELP SPORT for help.
Option B →	For Horo Reply HELP HORO for help

Step 3: User responds HELP SPORT. Help menu MT response is:

Program sponsor →	Farm Sports service:
Service Description →	Txt us your zip, we send local scores and news.
Additional Carrier Costs →	Msg&Data Rates May Apply.
Customer Support Info →	Contact: flb.com/help or 800-888-8888.
Opt Out Info →	Reply STOP to cancel.

Step 4: User responds HELP HORO. Help menu MT response is:

Program sponsor →	Farm Horoscope svc:
Service Description →	Txt us your bday, we send ur horoscope
Additional Carrier Costs →	Msg&Data Rates May Apply.
Customer Support Info →	Contact: flb.com/help or 800-888-8888.
Opt Out Info →	Reply STOP to cancel.



Standard Rate Examples

Change of Short Code Example Messages

CCS-SR-EG- 13 Last Alert on Old Short Code

User receives the following
Mobile Terminating (MT)
Message:

Program sponsor →	Farm League Baseball Alerts
Change to new code →	are moving to short code 12345. Future alerts will come from that code.
Opt-Out Information →	Reply STOP to cancel receiving Farm League Baseball Alerts.

CCS-SR-EG- 14 First Alert on New Short Code

User receives the following
Mobile Terminating (MT)
Message:

Program sponsor →	Farm League Baseball Alerts.
Notification of new code →	will now be delivered on short code 12345.
Opt-Out Info →	Reply STOP to cancel receiving Farm League Baseball Alerts.



Cross Carrier Standards

Section 2: Premium Rate

Premium Rate Cross Carrier Guidelines

2.0 General Guidelines

	Guideline
2.0-1	At a minimum, programs (including short code, IVR and WAP) should be run in a manner that is congruous with the letter and spirit of the MMA Global Code of Conduct for Mobile Marketing. The Code of Conduct is located at: http://www.mmaglobal.com/codeofconduct.pdf
2.0-2	At all times, programs must be in accordance with applicable federal and state laws, rules and regulations. In addition, all programs must be in compliance with the CTIA Audit Standards. http://www.wmcglobal.com/images/CTIA_playbook.pdf
2.0-3	Wireless subscribers have a right to privacy.
2.0-4	STOP and HELP keywords must work in the native language of the program and English.
2.0-5	For programs that use MMS, all keywords in this document should be supported via both SMS and MMS.

2.1 Messaging Frequency Guidelines

	Guideline
2.1-2	A "one-time" message program results in only one or two messages being delivered to the user at the time the interaction is initiated.
2.1-3	A "recurring" message program results in multiple messages being delivered to the user.

2.2 Tobacco & Alcohol Programs

	Guideline
2.2-1	Hard alcohol programs should only be marketed in locations that have age verification (bars, nightclubs).
2.2-2	Alcohol marketing should not directly promote the use of or consumption of alcohol.
2.2-3	Any reference to the abuse of alcohol, drugs, tobacco or other controlled substances is strictly prohibited. This includes verbal and non-verbal actions in which a person could conclude that promotion of drug use is intended.
2.2-4	Tobacco companies engaging in promotional mobile marketing programs, defined as programs that DO NOT directly advocate or promote the use or consumption of tobacco, must maintain their commitment to responsible marketing via age verification practices compatible with mobile program opt-in methods.
2.2-5	Any program brief submitted for carrier approval on behalf of a tobacco brand must illustrate the integration of electronic age verification methods (use of third party vendors to confirm legal age and identity) into the program opt-in process.
2.2-6	Program opt-in is only completed once the mobile subscriber has been verified as an adult tobacco consumer.



Cross Carrier Standards

2.3 Guidelines for Advertising Messaging Programs

	Guideline
2.3-1	When promoting programs, content providers should ensure that their advertising in all forms is clear and conspicuous regarding all terms and conditions associated with offers and adheres to all state and federal regulations.
2.3-2	All rules delineated below also apply to any affiliate marketing sites used to promote the service with the exception of web carrier-select jump pages.
2.3-3	CTIA audit standards do not permit use of the term free with respect to premium programs.
2.3-4	All advertising must clearly disclose in the audio and visual that you must be 18 years or older or have permission from the account holder.
2.3-5	All advertising must clearly disclose the subscription term, billing interval and information on how the charges will be applied (i.e., that the charges will be billed on the customer's wireless phone bill or deducted from the customer's prepaid balance).
2.3-6	All advertising must clearly disclose all methods of canceling the service.
2.3-7	Advertising must include a resource (such as a website or phone number) where subscribers can reference all terms and conditions.
2.3-8	Program advertising or its placement should not be deceptive about the functionality, features, or content of the underlying program.
2.3-9	If a checkbox is used to indicate a consumers' acceptance of the terms and conditions, it is not permissible for the checkbox to be pre-checked.

2.4 Advertising to Children

	Guideline
2.4-1	Industry participants must comply with all applicable laws and industry standards that apply to advertising and marketing to children. This includes compliance with the FCC's Children's Television Act as it applies to the promotion of commercial websites, the FTC's Children's Online Privacy Protection Act (COPPA), FTC advertising regulations, Children's Advertising Review Unit (CARU) guidelines and various trade organization regulations such as those set forth by the MPAA and ESRB.
2.4-2	All industry participants are also expected to ensure that the products being marketed are appropriate for the intended audience. As such, products that would be considered "mature" or might be considered dangerous or harmful to children (including, for example, alcohol, Rx and OTC medication, household cleaners, etc.) should not be marketed to children.
2.4-3	Marketing should not contain language that minimizes the price of a product or service (such as "only" or "just").
2.4-4	Advertisements should not contain language that exhorts children to buy or obtain a product or service.
2.4-5	Advertisements should not contain language that conveys a sense of urgency about an offer or service that does not expire.
2.4-6	Advertising must contain clear disclaimers in the audio and visual explaining the cost of premium or other fees.



Cross Carrier Standards

2.5 Opt-In Guidelines

	Guideline
2.5-1	Premium rate programs require double opt-in
2.5-2	Premium subscribers must positively acknowledge the acceptance of a premium charge before premium charges are applied to their account.
2.5-3	There are three mechanisms for acceptable opt-in activity: Web-based, IVR, and handset-based. In all instances, however, the subscriber must take affirmative action to signify acceptance of the program criteria, and the content provider or aggregator should record and store the acceptance (i.e. the IVR system must store the opt-in). While there are different methods of subscriber opt-in and many ways to say the same thing, the basic tenet should be that all of the required information listed below is delivered to the subscriber in a clear and unambiguous manner.
2.5-4	Regardless of type, the goal of any opt-in is to clearly communicate to the subscriber the financial obligation they are about to incur by entering the program.
2.5-5	Separate programs, even if they are offered on the same short code, require a separate opt-in.
2.5-6	If a match notification service is offered as part of a chat program, and the service generates premium charges, an additional opt-in should be obtained from the subscriber for this service.
2.5-7	Within the double opt-in flow, the following information (at a minimum) must be provided to the subscriber:
2.5-8	<ul style="list-style-type: none"> Identity of program sponsor—Defined as the program name, company name or brand associated with the campaign.
2.5-9	<ul style="list-style-type: none"> Contact details for the program sponsor— Either a toll free number, HELP via text message or a website address.
2.5-10	<ul style="list-style-type: none"> Short description of program—For example, Fun Stuff Premium Chat.
2.5-11	<ul style="list-style-type: none"> Pricing terms for the program—For example, \$0.99 per mobile originated message; \$3.99 per month.
2.5-12	Content providers should not redirect subscribers from one type of program (i.e. Ringtone subscription) to another type of program (i.e. Horoscope alert subscriptions) due to handset or account limitations. The two offers cited above are materially different and should be treated as such in all advertising and promotion.
2.5-13	In all materials (advertising, opt in, terms and conditions) the price must be in numerical format including the “\$” sign.
2.5-14	Selling mobile opt-in lists is prohibited
2.5-15	When a subscriber ports his/her telephone number between carriers, he/she is required to re-opt-in to all short code programs.

2.5.1 Premium Rate Double Opt In via SMS

	Guideline
2.5.1-1	Affirmative double opt-in confirmation via handset is required.
2.5.1-2	Examples of affirmative double opt-in responses include these: YES, Y, GO, OKAY, OK, K, O.K., SURE, YEP, YEAH



Cross Carrier Standards

2.5.1-3	<p>Content providers must provide the following information to users before applying any premium charges:</p> <ul style="list-style-type: none"> • Identity of the program sponsor • Contact details for the program sponsor • Short description of program • Pricing and terms for the program • Opt-out information. Opt-out information does not need to be in the initial PIN (or Reply Y) MT message. • In replacement of STOP, HELP must be included in the initial PIN (Or Reply Y) MT message. • Message and Data Rates May Apply <p>Sample Language: Msg&Data Rates May Apply. Call 888-888-8888/Text Help to XXX/www.XXX.com for terms. You will be charged \$X.XX. Call 888-888-8888/Text HELP to XXX.www.XXX.com for terms. Msg&Data Rates May Apply. Call 888-888-8888/Text HELP to XXX/www.XXX.com for terms. [Disclose additional charges in message chain] "You must be 18 or older or have a parent or guardian's permission before downloading." "Call 888-888-8888 or text STOP to cancel."</p>
2.5.1-4	Confirmation message after affirmative acceptance of opt-in must disclose the premium charge has been billed or deducted from the users account.

2.5.2 Premium Rate Double Opt In from Internet-MIN and PIN Entry Page

	Guideline
2.5.2-1	Many consumers prefer to provision and interact with SMS programs using the Internet. Initial opt in may be performed at the content provider hosted web MIN entry page. MIN and PIN entry pages must only be controlled by content providers.
2.5.2-2	If the second opt-in is from the Internet, the content provider must positively confirm that the authorized subscriber is acknowledging the opt-in. This can be done by the user inputting (on website)a PIN code sent via an MT message to the mobile phone number that the consumer has provided on the website ("PIN Confirmation Msg"), or the consumer responding via an MO message, such as replying Y or YES, to an MT message that is sent to the mobile phone number the consumer provided.
2.5.2-3	This PIN message must also include program pricing and terms.
2.5.2-4	For premium campaigns the PIN code, or "reply Yes" type text, must be after the program pricing information.
2.5.2-5	In addition, the content provider should use this channel to provide more detailed information about the program. Regardless of the web opt-in details, the goal is that the entire terms of the offer must be clear to the subscriber through the process.



Cross Carrier Standards

2.5.2-6	<p>The following guidelines apply to MIN and PIN entry pages:</p> <ul style="list-style-type: none"> • Display pricing within 125 pixels directly above or below cell-submit field • Display pricing font size to at least size 12 point font • Pricing color scheme must have a minimum color contrast of 125 • Display full pricing clearly as numerals with dollar sign (\$) • The total price must be shown as it will appear on the customer's bill. • The price and term must not contain any other text besides the price and term. <p>The page must include:</p> <ul style="list-style-type: none"> • Disclosure of actual product/service, quantity, whether it is a subscription service and renewal term must be present as part of the main offer; • Display only carrier logos distributed from or approved by carriers; • The word 'free' must not be used • Privacy policy or clearly labeled link to privacy policy. • Indication that games/applications are not available for specific carriers, as applicable • Do not promote binary programs for non-binary carriers
2.5.2-7	<p>The following guidelines apply to the Terms and Conditions on the MIN and PIN entry pages:</p> <ul style="list-style-type: none"> • Wording should be identical if both pages are used in the purchase flow • Website MIN and PIN entry pages must display at least the first three lines above the fold of the screen as viewed on a 1024x768 resolution monitor. If the full terms of service are not displayed, then there must be a link to them as part of the summary T&Cs. <p>(Some carriers/audit agencies measure 1024 x 632 pixels within the browser to equal resolution of 1024x768" using the Firefox web browser.)</p> <ul style="list-style-type: none"> • Information must apply to the specific product(s) being sold • Carrier compatibility should be stated • If not all content is compatible with all handsets, that should be stated • Give notice that a would-be participant is the account holder or has the account holder's permission to participate • T&Cs cannot be in scrolling box • State price, billing frequency and "message and data rates may apply" • If the service is a subscription, indicate the billing term, that renewal occurs automatically and that charges continue until cancelled by the customer • Disclose that the premium charge will be added to the subscriber's wireless phone bill or deducted from their prepaid balance account • Give help instructions and toll free customer care number where available

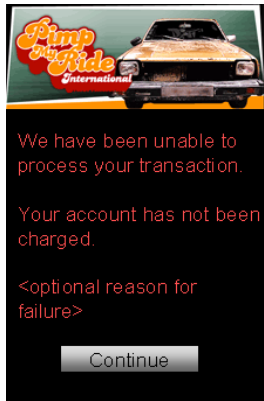


Cross Carrier Standards

2.5.3 Premium Rate Double Opt In via IVR

	Guideline
2.5.3-1	Some consumers prefer to initiate new SMS services from an IVR (Interactive Voice Response) platform. The IVR phone number is used in the provider's call to action. After the details of the program have been relayed to the subscriber via the IVR system, the subscriber is prompted to press a key to enter into the IVR program. This key press is recorded by the system and constitutes the caller's second opt-in to the program. Regardless of the opt-in process, the goal is that the entire terms of the offer must be clear to the subscriber through the process. An example of Opt-in via IVR can be found at CCS-EG-04.
2.5.3-2	Some mobile related services are initiated from an IVR platform. An IVR phone number (800 number, local number, premium rate number, pound (#) code or other) is used in the provider's call to action.
2.5.3-3	When the consumer dials into the IVR system and responds to acceptance prompt (initial opt-in), the IVR should outline the service and offer details
2.5.3-4	The IVR system should then subsequently ask the consumer to confirm their purchase with a key press (secondary opt-in).
2.5.3-5	The user's input must be captured to record his/her consent of the purchase (double opt-in).
2.5.3-6	The IVR should then send a confirmation MT message to the user's handset.
2.5.3-7	In cases where the number the user is calling from differs from the number the service will be billed to (for example in the case of land-line callers); a PIN verification message has to be sent out by the IVR to the mobile number the service will be billed on.
2.5.3-8	The consumer must input the PIN into the IVR system prior to the provider initiating and billing the service
2.5.3-9	The above confirmation step should be recorded and stored by the IVR system. See 2.9.2 for storage length of Opt-ins.
2.5.3-10	In the case where content is purchased, users should be informed of the next steps to download and install their new content on their phone.
2.5.3-11	Consumers should be re-informed of how to call back and get help in case of problems downloading or installing their content.

2.5.4 Premium Rate Double Opt In via Mobile Web/ WAP

	Guideline
2.5.4-1	<p>Best practice includes ensuring that the consumer is advised of any failures in the WAP payment flow. A payment failure page should be presented in the event that the billing request is unsuccessful.</p> 
2.5.4-2	<p>The page should contain the text set out in the items below:</p> <ul style="list-style-type: none"> Clicking "Continue" from this failure page should take the user back to the content provider site.



Cross Carrier Standards

2.5.4-3	<ul style="list-style-type: none"> There is an optional field to provide more detail on the reasons for failure (out of funds, unsuccessful connection, etc.) where the billing platform provides this information in real-time.
2.5.4-4	<ul style="list-style-type: none"> Carrier ability to waive double opt-in—In certain instances, carriers may waive the double opt-in on a program-by-program basis.
2.5.4-5	Because opt-in and opt-out messages are administrative in nature, they should not result in any premium charges for the subscriber.

2.6 Program Termination and Opt Out

	Guideline
2.6-1	Directions on how to unsubscribe from the program should be included in program messaging on a regular basis.
2.6-2	Content providers must offer subscribers the opportunity to cancel the service at any time. Charges for services that are billed daily may only be applied for services received up to the date of cancellation.
2.6-3	Content providers must offer subscribers the opportunity to cancel the service at any time. The following rules govern program opt-out:
2.6-4	<p>A subscriber can stop participating and receiving messages from any program by sending STOP to the short code used for that program.</p> <ul style="list-style-type: none"> END, CANCEL, UNSUBSCRIBE or QUIT must also be supported opt-out key words for all programs; however, content providers should feature the word STOP in their advertising and messaging. <p>Note: Programs can support additional opt-out key words.</p> <ul style="list-style-type: none"> The STOP keyword must work in the native language of the program. In a non-English program, the English keyword must not return an error message.
2.6-5	<p>If the subscriber is participating in multiple programs on the short code, there are two options for the content provider when a subscriber sends an opt-out request:</p> <ul style="list-style-type: none"> The content provider sends a menu of the programs the subscriber is subscribed to and the subscriber has the responsibility to reply with the specific keyword to the specific program they would like to be opted out of. To ensure subscribers also have a way to opt-out of all programs within this menu, STOP ALL must be added to the menu choices. The stop menu message does NOT need to contain <ul style="list-style-type: none"> i) “Msg&Data Rates May Apply” ii) Pricing iii) Sponsor contact information. Or if the subscriber sent STOP ALL to the short code, they are opted-out of all programs they were enrolled in on that short code.
2.6-6	This STOP command functionality requirement applies to all programs, including one-time use programs where the subscriber will not receive additional messages. This is to avoid subscriber confusion around the use of the STOP command.
2.6-7	Short codes running MMS programs should handle the STOP keyword correctly, regardless whether the subscriber sends the keyword via MMS or SMS.
2.6-8	Short code programs must support mixed case opt-out commands and ignore subsequent non-keyword text.
2.6-9	An MT message confirming the opt-out should be sent to the subscriber. This must not be a premium message. This message should reference the specific program the subscriber has opted-out from. No further messages should be sent to the subscriber from this program, including marketing messages for any related or unrelated programs.
2.6-10	When STOP, or any of the opt-out keywords above, is sent to a program, the program must respond with an MT message, whether or not the subscriber is subscribed to the program.



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2.6-11	Content providers should periodically scan their MO logs for subscribers that are clearly trying to unsubscribe to a service, but are not following the programmed rules and then take the action to end their subscription based on those MO logs.
2.6-12	The content provider must record and store all opt-out transactions.
2.6-13	If a subscriber is inactive in any program for six months, the opt-in should expire. At that time, it is permissible to send the subscriber one final MT message notifying them that his/her username and other subscription information will be deleted from the program. No messages to the subscriber after the expiration are permitted. This provision does not apply to programs where the subscriber may have stored value (i.e., remaining credits) with the content provider.
2.6-14	Subscribers should be able to terminate their participation in a subscription program as specified in the opt-out section. Below are additional requirements for terminations of subscription programs:
2.6-15	<ul style="list-style-type: none"> When a subscriber opts-out of a program, no further premium charges should be submitted or applied to the subscribers account by that program for that subscriber.
2.6-16	<ul style="list-style-type: none"> There should be no minimum subscription periods for any program. For clarity, this does not mean that pro-ration is required.
2.6-17	<ul style="list-style-type: none"> For subscription services that do not originate from an MO text message, but originate for example from a direct URL entry or search link to a WAP site, the payment advice page must clearly and conspicuously present the following program details:
2.6-18	<ul style="list-style-type: none"> Identification of the program as a subscription and the billing interval.
2.6-19	<ul style="list-style-type: none"> Contact details for the program sponsor—Either a toll-free number or a Web site address for opt-out details.
2.6-20	This includes use of the STOP command or its variants, as set out above, and a mobile or PC website where the user can list live subscriptions and cancel any or all of these.
2.6-21	For chat programs , the subscriber should be opted-out after 90 days of inactivity. An informational message informing the subscriber of the opt-out may be sent.
2.6-22	Regardless of the subscriber's status, he/she should be able to opt-out of the program at any time.

2.7 Customer Care and HELP Guidelines

	Guideline
2.7-1	It is important for subscribers to understand and be in control of their participation in short code programs; therefore, program information should be transparent. Regardless of manner of entry for a subscriber, help messaging commands, phone numbers, URL's, and email addresses should result in the subscriber receiving help with their issue. Dead ends that do not the result in the ability for subscribers to resolve their issues are not acceptable.
2.7-2	Subscribers must be able to reach customer service through the IVR for assistance with the IVR mobile program.
2.7-3	<p>A subscriber can receive help information by sending the keyword HELP to any program. HELP or HLP keywords should work for all subscriber requests. HLP is optional for HELP, but not required.</p> <ul style="list-style-type: none"> The HELP keyword sent by the consumer cannot be case sensitive and should ignore subsequent non-keyword text The HELP keyword must work in the native language of the program. In a non-English program, the English keyword must not return an error message.



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2.7-4	For short codes running MMS programs, a help response should be returned whether the subscriber sends in HELP to the short code via MMS or SMS.
2.7-5	HELP messages should not result in premium charges to the subscriber's bill.
2.7-6	Responses to HELP requests should be available to anyone who requests help information from the short code via SMS.
2.7-7	To help subscribers understand their participation, each program should respond with the program details listed below when the subscriber sends the keyword HELP to the program short code.
2.7-8	<ul style="list-style-type: none"> Identity of program sponsor—This is defined as the program name, company name, or brand associated with the campaign.
2.7-9	<ul style="list-style-type: none"> Customer support info — Either a toll-free number, Web address, or e-mail address. Note that Sprint requires a toll free number for all programs and T-Mobile requires a URL for all programs.
2.7-10	<ul style="list-style-type: none"> Service description of program — For example, Fun Stuff Premium Chat.
2.7-11	<ul style="list-style-type: none"> Service price—For example, \$0.99 per mobile originated message; \$3.99 per month.
2.7-12	<ul style="list-style-type: none"> Opt-out information
2.7-13	<ul style="list-style-type: none"> Frequency
2.7-14	<ul style="list-style-type: none"> Must include "Msg&Data Rates May Apply"
2.7-15	<ul style="list-style-type: none"> Privacy statement, if applicable.
2.7-16	Help messages do not need to contain renewal date information. (Sprint carrier rules apply. Requires the renewal date as well as any credits remaining.)
2.7-17	<p>If the short code has multiple programs (keywords) on the same short code, the application should respond in one of two ways:</p> <ol style="list-style-type: none"> 1) If the subscriber has opted in to only one program, the application should supply the information for the program the subscriber is opted-in to. 2) If the subscriber has opted-in to multiple programs, the application should present a multiple-choice question asking the subscriber what program they would like help on. <p>The first help menu does NOT need to include:</p> <ul style="list-style-type: none"> · "Msg&Data Rates May Apply" · STOP, Or Sponsor Contact Information <p>The menu should contain a question asking what the subscriber seeks help with and a list of options for the user to get help on. Once the user has identified the program they want help with, the appropriate help information must be in the subsequent MT.</p>
2.7-18	Where there is no short code initiating access to the service, help must be provided as a link from WAP payment presentation pages. This page containing help should, at a minimum, identify services that are currently opted into, opt-out information, pricing and payment terms. It is recommended that a PC-accessible web site be provided into which a user entering their cell phone number can retrieve detailed information on all live services provided by that program sponsor.



Cross Carrier Standards

2.8 Customer Record Maintenance

	Guideline
2.8-1	To the extent that carriers supply deactivation and recycled number information, content providers and aggregators are required to have appropriate and effective systems and processes for managing deactivation and recycled number information. These systems and processes should be designed to ensure that mobile content programs subscribed to by previous holders of a specific phone number do not continue to be delivered or billed to a subsequent holder of that number when it is reassigned. Content providers and aggregators should process deactivation information within three business days of receipt.
2.8-2	Independent of method of entry (SMS, MMS, Web, WAP, IVR) opt-in and opt-out records - including single, double and triple opt-in records - should be retained from the time the subscriber opts-in until a minimum of six months after the subscriber has opted-out of the program (minimum opt-in archiving period is one calendar year). These records should be made available to the aggregator or carrier upon request.
2.8-3	The content provider/aggregator is responsible for tracking program opt-in information by subscriber.

2.9 Sweepstakes & Contests

Sweepstakes and contests, including those conducted on the mobile platform, are among the most regulated of marketing tactics.

Mobile Sweepstakes and Contests definitions:

Sweepstakes - A sweepstakes is a legal game that includes a prize, and a game of chance. No consideration is allowed. (Sprint's definition of sweepstakes includes anything with a prize component regardless of the method of prize delivery.)

Lottery - A lottery is a game that includes a prize, a game of chance, and consideration. Federal legislation and State laws govern (and disallow) all lotteries for promotional purposes.

Contest - A contest is a promotional mechanism that includes a prize, and a game of skill. Consideration is allowed, but there cannot be any element of chance.

Consideration - Although the definition of consideration varies from state to state, generally, consideration means that a willing participant is required to purchase something or pay for access to be eligible to enter a game.

	Guideline
2.9-1	Consideration may be monetary or non-monetary (an example of non-monetary consideration is a sweepstakes where the participant is required to provide detailed consumer information to be eligible).
2.9-2	All sweepstakes must offer a free Alternative Method Of Entry (AMOE). Allowing participants to enter via mail, internet, fax or Interactive Voice Recognition (IVR) via a toll free number are all forms of AMOE, but are not the only forms of free AMOE.
2.9-3	Anyone running a sweepstakes should seek legal guidance when drawing up rules. This is especially important if premium SMS is being considered as part of the sweepstakes.



Cross Carrier Standards

2.10 Terms & Conditions

	Guideline
2.10-1	Terms and Conditions must contain the following: <ul style="list-style-type: none"> Pricing and billing frequency
2.10-2	<ul style="list-style-type: none"> Product description and quantity
2.10-3	<ul style="list-style-type: none"> Program identification including billing shortcode
2.10-4	<ul style="list-style-type: none"> Opt-out instructions (must be displayed in bold typeface)
2.10-5	<ul style="list-style-type: none"> Message and Data Rates may apply
2.10-6	<ul style="list-style-type: none"> Links to privacy policy and comprehensive terms and conditions.
2.10-7	<ul style="list-style-type: none"> Customer Care Contact info (#800, email address, or website)
2.10-8	<ul style="list-style-type: none"> Billing method. Information disclosing that the premium charge will be added to the subscriber's wireless phone bill or deducted from their prepaid account
2.10-9	<ul style="list-style-type: none"> Account holder authorization
2.10-10	<ul style="list-style-type: none"> Customer cancellation (ie. notice that charges will recur until cancelled; subscriptions/recurring programs only)
2.10-11	<ul style="list-style-type: none"> If the service is a subscription
2.10-12	The above terms apply to WAP sites IF the subscriber is charged for accessing the WAP site home (or landing) page. Otherwise, all advice of charges must be clearly and conspicuously presented within the site, as shown in the example CCS-EG-06 .
2.10-13	Comprehensive terms and conditions must be hosted on a static Website to which a user may return. Comprehensive terms and conditions must contain all disclosures present in the abbreviated terms and conditions.

2.11 Affiliate Marketing

Affiliate Marketing is a process whereby a content provider provides financial consideration to one or more persons or entities in exchange for their agreement to offer content providers' products and/or services to consumers.

	Guideline
2.11-1	To ensure that advertising of mobile products and services offered via Affiliate Marketing is clear and accurate, content providers engaging in Affiliate Marketing agree that: <ul style="list-style-type: none"> Marketing via the email channel shall comply with the CAN-SPAM Act of 2003 (Controlling the Assault of Non-Solicited Pornography & Marketing Act) and any and all implementing regulations promulgated by the Federal Trade Commission and the Federal Communications Commission, and;
2.11-2	<ul style="list-style-type: none"> Mobile Identification Number (MIN) entry, and Personal Identification (PIN) entry pages (including but not limited to pages that provide a mechanism for users to make a purchase of content providers' products and services) must be controlled and monitored by the applicable content provider or Application Service Provider for compliance to applicable state laws and MMA Guidelines.

2.11.1 Affiliate Marketing Web-based Carrier Select Page

	Guideline
2.11.1-1	Content providers should terminate their relationship with any party engaged in Affiliate Marketing on their behalf that is found to be non-compliant. Web pages used for affiliate marketing are commonly known as Jump Pages. Jump pages, which are third party hosted pages that redirect a consumer to one or more content provider's websites, are known as Carrier-Select Jump Pages.



Cross Carrier Standards

2.11.1-1	<p>The following describes what is required and not allowed on Carrier-Select Jump Pages:</p> <p>Required</p> <ul style="list-style-type: none"> If any alternative wireless content is being advertised it must be disclosed in a font no smaller than 1/2 the font size of the primary offer description and no further than 20 pixels from the primary offer description with a minimum of 25 point font size Carrier logos distributed from or approved by carriers <p>Not allowed</p> <ul style="list-style-type: none"> Purchase flow Request/take MIN or PIN information Inappropriate or unapproved content per individual carrier guidelines Inappropriate use of the word 'free' (CCS-30) Use of carrier logo or name if advertising any service when that service is not supported by that carrier
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2.12 Premium WAP Sites

	Guideline
2.12-1	Access to content presented in the form of browse-able WAP sites may be initiated by SMS short code, by WAP push from a PC website, by direct entry of a URL, by clicking a search link, etc. While opt-in may not originate through an SMS short code, subscribers are still billed "on-net" through PSMS or direct carrier billing connections, placing such sites under the governance of these Consumer Best Practice Guidelines.
2.12-2	The same opt-in rules apply for WAP sites as for SMS programs. Double opt-in is required IF there is any charge associated with accessing the first page of a WAP site presented when the subscriber selects a service message (embedded link or WAP push message), or browses to that page by any other means.
2.12-3	There is no requirement for opt-in text messages IF the first page of a WAP site presented to the user does not incur a charge, and any subsequent charges are clearly set out, requiring an explicit user action as described below.
2.12-4	Before any billing events can be generated, the advice of charge must be presented clearly to the customer, in substantially the same format as the payment flow shown below.
2.12-5	There must be an explicit "Buy" button visible to the user on the first screen of the payment details page. Only when the user clicks this button should a billing event be generated. "Buy" may be replaced with "Subscribe" or "Purchase" terminology.
2.12-6	There must be an explicit "Cancel" button available to the user on the first screen of the payment details page immediately below the Buy button and visible without requiring the user to scroll down the screen.
2.12-7	There must be an explicit "Terms and conditions" link available to the user, listed directly after the "Cancel" button. The Terms and conditions page shown to the user should contain at a minimum the following information:
2.12-8	That the payment will be made to the subscriber's wireless phone bill.
2.12-9	<ul style="list-style-type: none"> That the user will be advised of all charges before being billed.
2.12-10	<ul style="list-style-type: none"> The description that will appear on the subscriber's phone bill or deducted from their pre-paid balance.
2.12-11	<ul style="list-style-type: none"> There should be a link providing customer care contact information and advising that other ancillary charges, such as carrier data charges, that may be incurred.



Cross Carrier Standards

2.13 Subscription Programs

A **subscription program** is any program the subscriber opts-in to where the result is that the subscriber passively incurs premium charges over time for content delivery. There are two kinds of subscription programs:

- 1) A program for a set period of time, such as one month.
- 2) A program for a set number of uses, after which the subscriber may be charged for another "bucket" of uses.


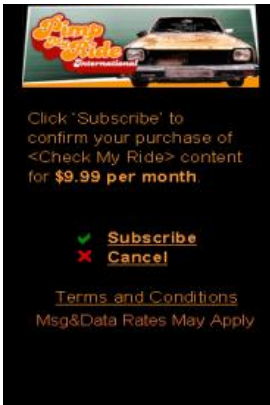

	Guideline
2.13-1	In addition to the information required in the double opt-in mechanisms in sections 2.6 & 2.6.1 Premium Rate Double Opt In via SMS, the opt-in flow for a subscription program must also include the following: <ul style="list-style-type: none"> • Identification of the program as a subscription and the billing interval.
2.13-2	<ul style="list-style-type: none"> • The word "subscription" or equivalent must be used in the advertising and T&Cs.
2.13-3	<ul style="list-style-type: none"> • Contact details for the program sponsor—Either a toll free number or a Web site address for opt-out details.
2.13-4	Subscription periods should not be longer than one month.
2.13-5	Regardless of the subscription period (daily, weekly, monthly, for example), the subscriber should be notified of the subscription pricing in conjunction with the subscription period.
2.13-6	Before the program is renewed, or at a minimum of once per month, a renewal message must be sent to the participating subscriber's handset containing these details:
2.13-7	<ul style="list-style-type: none"> • The name of program
2.13-8	<ul style="list-style-type: none"> • The fact that the program is a subscription and is being renewed
2.13-9	<ul style="list-style-type: none"> • Billing period and advice of charge for the program
2.13-10	<ul style="list-style-type: none"> • Opt-out details
2.13-11	<ul style="list-style-type: none"> • Must include "Msg&Data Rates May Apply" and customer support information.
2.13-12	This information may be supplied in other program-related messaging to the handset but should coincide with the subscription anniversary.
2.13-13	Each subscription service must be renewed independently of when the subscription was originally ordered.

2.13.1 Subscription Double Opt In via Mobile Web/ WAP

	Guideline
2.13.1-1	For subscriptions opted-in to through the WAP flow, the advice of charge page shown below must be presented to the subscriber by the content provider. This page describes the purchase terms of the subscription, including the billing frequency, and the purchase link name is changed from "Buy" to "Subscribe"
2.13.1-2	The payment advice page should include the following content: <ul style="list-style-type: none"> • Click <Subscribe> to confirm your purchase of <content description> for <price> per <billing period>.
2.13.1-3	<ul style="list-style-type: none"> • A link or button that activates the subscription. The name of this link should clearly convey to the subscriber that clicking on the link will activate the subscription. e.g. "Subscribe", "Buy Now", "Charge my phone bill"
2.13.1-4	<ul style="list-style-type: none"> • A link or button directly below the activation link that says "Cancel".



Cross Carrier Standards

2.13.1-5	<ul style="list-style-type: none"> A link saying "Terms & Conditions". This link must lead to a page listing detailed terms and conditions of the service, including at a minimum the name and contact details of the content provider.
2.13.1-6	<ul style="list-style-type: none"> A link saying "Msg&Data Rates May Apply". This link must lead to a page describing the standard rate data and messaging charges that may apply, depending on a subscriber's plan
2.13.1-7	<p>When the subscriber clicks the "Subscribe" or subscription activation link, the page to which they are re-directed containing the content for download should display the following confirmation text:</p> <ul style="list-style-type: none"> Thank you for your payment of <price>. Your subscription has been activated
2.13.1-8	This confirmation page must also state how to use the HELP and STOP text commands to the relevant short code.
2.13.1-9	Once a subscriber has successfully opted into the program via a Mobile Web browser, an MT message should be sent notifying the subscriber of the purchase, serving as the notice of charge for the transaction. This message should be sent to the subscriber within twelve hours of opting in and should include the following information: program name, price of subscription, billing period, HELP to receive help, and STOP to opt-out.
2.13.1-10	<p>Example of WAP Subscription</p> <div style="display: flex; justify-content: space-around; align-items: flex-start;"> <div style="text-align: center;">  <p>First Opt-In</p> </div> <div style="text-align: center;">  <p>Second Opt-In</p> </div> <div style="text-align: center;">  <p>Confirmation Page</p> </div> </div>



Premium Rate Examples

EXAMPLE: HELP Messages (CCS-EG-01)

Help (Single Service)

Step 1: User sends HELP Mobile Originating (MO) Msg

Step 2: Help MT response:

Program sponsor →	<i>AcmeMobileRingtonesClub:</i>
Service Description & Frequency →	<i>Subscribed for 5 Ringtones for \$5.99/mo.</i>
Customer Support Info →	<i>800-000-0000. www.HELPURL.com.</i>
Additional Carrier Costs →	<i>Msg&Data Rates May Apply</i>
Opt Out Info →	<i>Reply STOP to cancel,</i>
Sprint family requires: Renewal date/credits remaining →	<i>Renews:10/10</i>

Cross Carrier Examples: Legend

Web, TV, In-Store, Promotional Poster	Text Message
Mobile Web/ WAP	

Help (Multiple Services)

Step 1: User sends HELP Mobile Originating (MO) Msg

Step 2: Help menu MT response to a HELP MO from a user

Program sponsor →	<i>AcmeMobileRingtonesClub:</i>
Option A →	<i>Send HELP TONE1 for Poly club or</i>
Option B →	<i>HELP TONE2 for Truetone club STOP to cancel</i>

Step 3: User responds HELP TONE1.

Program sponsor →	<i>AcmeMobileRingtonesClub:</i>
Service Desc & Freq →	<i>Subscribed for 5 Polytones for \$5.99/mo.</i>
Customer Support Info →	<i>800-000-0000. www.HELPURL.com.</i>
Additional Carrier Costs →	<i>Msg&Data Rates May Apply</i>
Opt Out Info →	<i>Reply STOP to cancel,</i>
Sprint family requires: Renewal date/credits remaining →	<i>Renews:10/10</i>

Step 4: User responds HELP TONE2.

Program sponsor →	<i>AcmeMobileRingtonesClub:</i>
Service Desc & Freq →	<i>Subscribed for 5 Truetones for \$5.99/mo.</i>
Customer Support Info →	<i>800-000-0000. www.HELPURL.com.</i>
Additional Carrier Costs →	<i>Msg&Data Rates May Apply</i>
Opt Out Info →	<i>Reply STOP to cancel,</i>
Sprint family requires: Renewal date/credits remaining →	<i>Renews:10/10</i>



Premium Rate Examples

EXAMPLE: STOP Messages (CCS-EG-02)

Stop (Single Service)

User receives the following
Mobile Terminating (MT)
Message:

Program sponsor →	<i>AcmeMobileRingtonesClub:</i>
Discontinuation of Service →	<i>Your Ringtone subscription is cancelled.</i>
Discontinuation of Charges →	<i>You will get no more messages or charges.</i>
Additional Carrier Costs →	<i>Msg&Data Rates May Apply.</i>
Customer Support Info →	www.HELPURL.com

Stop (Multiple Services)

Step 1: User sends STOP Mobile
Originating (MO) Msg

Step 2: Help menu MT response to a
STOP MO from a user

Program sponsor →	<i>AcmeMobileRingtonesClub:</i>
Option A →	<i>Send STOP TONE1 for Polytone club or</i>
Option B →	<i>STOP TONE2 for Truetone club</i>

Step 3: User responds STOP
TONE1.

Program sponsor →	<i>AcmeMobileRingtonesClub:</i>
Discontinuation of Service →	<i>Your Polytone subscription is cancelled.</i>
Discontinuation of Charges →	<i>You will get no more messages or charges.</i>
Additional Carrier Costs →	<i>Msg&Data Rates May Apply.</i>
Customer Support Info →	www.HELPURL.com

Step 4: User responds STOP
TONE2.

Program sponsor →	<i>AcmeMobileRingtonesClub:</i>
Discontinuation of Service →	<i>Your Truetone subscription is cancelled.</i>
Discontinuation of Charges →	<i>You will get no more messages or charges.</i>
Additional Carrier Costs →	<i>Msg&Data Rates May Apply.</i>
Customer Support Info →	www.HELPURL.com



Premium Rate Examples

EXAMPLE: PREMIUM Rate IVR (Initial Opt In IVR) (CCS-EG-04)

Call to Action The following is advertised on web, television, in-store promotional poster, etc.:

Program sponsor →	WOD: Weather on Demand.
Service Description →	Call 888-222-2222 to get current weather for your area sent to your phone. Dial 0 for help.
Price and Frequency →	\$5.99/mo for daily info (7 per week)
Customer Support Info →	Text HELP for help.
Opt Out Info →	To stop text STOP.
Additional Carrier Costs →	Msg&Data Rates May Apply.

Step 1: User responds to User calls 888-222-2222 [Mobile subscriber calls and is
Call to Action prompted to select SMS to phone]

Step 2: Mobile Content MT User receives the following MT
Message:

Mobile Content →	WOD: Partly sunny with chance of showers in late afternoon. Highs in the 70 during the day, and 62 at night. Reply Help for Help.
------------------	---



Premium Rate Examples

EXAMPLE: Premium Rated Double Opt In- Alert Subscription (CCS-EG-05)

Call to Action

The following is advertised on web, television, in-store promotional poster, etc.:

Program sponsor →	Farm league baseball!
Service Description →	Txt us your farm town zip code. Txt <Your Zip Code> to 12345.
Service Cost →	We send game day reminder for \$3.99/month, charged to your wireless bill.
Frequency of Messaging →	Get 4 msg/month.
Customer Support Info →	Txt HELP for help.
Opt Out Info →	To stop txt STOP.
Additional Carrier Costs →	Msg&Data Rates May Apply.

Step 1: User responds to Call to Action

Text '44521' to 12345.

Step 2:

User receives the following MT Message:

Program sponsor →	Farm League Baseball Alerts!
Service price →	To confirm \$3.99 monthly alerts, reply YES.
Frequency of messaging →	Get 4 msgs/month.
How to get help →	Reply HELP for help
Additional carrier costs →	Msg&Data Rates May Apply.

Step 3: Double Opt In

User sends MO message "YES"

Step 4: Initial MT

Service description →	Thanks for subscribing to Farm League
Service price →	Baseball alerts for \$3.99/month!
Frequency of messaging →	Get 4 msgs/month.
How to get help →	Reply HELP for help.
How to stop →	Reply STOP to cancel.
Additional carrier costs →	Msg&Data Rates May Apply.

Step 5: MT Alert

User receives the following MT Message:

Alert →	Farm League Baseball Alert! Crosstown Rebels battle the Lakeview Titans on 11/11/08 @ 6pm in Dolores Park. Support your local team. Reply Help for Help.
---------	--



Premium Rate Examples

EXAMPLE: Premium Rated Opt In for WAP (CCS-EG-06)

**Please refer to specific carrier guidelines on Mobile Web and Premium WAP detailed requirements.*

Call to Action The following is advertised on web, television, in-store promotional poster, etc.:

Program sponsor →	CheckMyRide Tones!
Service Description →	Visit wap.checkmyride.com on your phone microbrowser. Visit HELP for help.
Customer Support Info →	Txt HELP for help.
Opt Out Info →	To stop txt STOP.
Additional Carrier Costs →	Msg&Data Rates May Apply.

Step 1: User responds to User visits wap.checkmyride.com
Call to Action

Step 2: WAP Opt In 1 User sees the following WAP/ xHTML page with product offer:

Program sponsor →	Checkmyride.com!
Service Description →	The hottest ringtones sent to your phone every month.
Service price →	Get 5 ringtones for \$9.99/month.
Link to terms →	Terms and Conditions
Additional Carrier Costs →	Msg&Data Rates May Apply.

Step 3: WAP Opt In 2 Mobile subscriber sees the following WAP/xHTML page after selecting subscription.

Program sponsor →	Checkmyride.com!
Service Description →	Click "Subscribe" to confirm your purchase of "Check my Ride" tones
Service price →	for \$9.99 per month.
	Subscribe Cancel
Link to terms →	Terms and Conditions
Additional Carrier Costs →	Msg&Data Rates May Apply.

Step 4: WAP Confirmation Mobile subscriber sees the following WAP/xHTML page after being billed.

Service Description & cost →	Thank you for your payment of \$9.99 per month. Your subscription has been activated.
Frequency of messaging →	Get 5 ringtones per month.
How to get help →	Text HELP for help to 12345.
How to Stop →	Text STOP to cancel to 12345



Premium Rate Examples

Step 5: Confirmation MT

User receives the following MT Message:

Service Description & cost →

Thank you for your payment of \$9.99 per month for Check my Ride tones.

How to get help →

Reply HELP for help.

How to Stop →

Reply STOP to cancel

EXAMPLE: Billing Renewal Message (CCS-EG-10)

	Sample Billing Renewal Message	
Type	Sample Text	Charge
MT	Your XYZ Alerts Subscription Renewed, 5 msg/month for \$5.99/mo.800-000-0000 Msg&Data Rates May Apply.www.HELPURL.com.Reply HELP for help, STOP to cancel	Std



Cross Carrier Standards

Section 3: Free To End User (FTEU)

Free to End User Cross Carrier Guidelines

3.0 General Guidelines

	Guideline
3.0-1	At a minimum, programs should be run in a manner that is congruous with the letter and spirit of the MMA Global Code of Conduct for Mobile Marketing. The Code of Conduct is located at: http://www.mmaglobal.com/codeofconduct.pdf
3.0-2	At all times, programs must be in accordance with applicable federal and state laws, rules and regulations.
3.0-3	Wireless subscribers have a right to privacy.
3.0-4	An individual program may be set up as FTEU on carriers which support the functionality and standard rate (SR) on carriers who do not support FTEU, provided that the application does not inherently have to be delivered as FTEU (for example, for legal reasons), and further provided that Content Providers ensure that all advertising, marketing and other consumer materials regarding the program clearly indicate on which carriers the program is offered as a standard rate program. The guidelines for FTEU programs and SR programs should apply on each carrier as appropriate.
3.0-5	Charging Disclosure: FTEU Mobile Terminated (MT) messages sent to subscribers by the program should be disclosed as such. The text message must start with "FREE" and the text message must include wording so that it's clear to a consumer that it's a free message, but the text message no longer must start with the words "Free Msg". These examples are acceptable: "Free Mammoth Ski Alert", "Free Lender's Bank Msg", "Free Msg: WOD alerts".
3.0-6	FTEU programs are approved based on the following information submitted by the content provider through the carrier:
3.0-7	<ul style="list-style-type: none"> The information submitted to the carrier for program approval should include the estimated frequency with which end users will receive FTEU messages.
3.0-8	<ul style="list-style-type: none"> A formal restriction should not be placed on the number of messages, which may be sent as part of an individual FTEU program. However, carrier approval may be given on a case-by-case basis for programs where the estimated number and frequency of FTEU messages is determined by the carrier to be appropriate for the application and approved by carrier. Note that many potential FTEU applications will involve event-triggered alert messages, the frequency of which cannot precisely be predetermined.
3.0-9	Not all carriers support FTEU messaging

3.1 Guidelines for Advertising Messaging Programs

	Guideline
3.1-1	When promoting programs, content providers should ensure that their advertising in all forms is clear and conspicuous regarding all terms and conditions associated with offers and adheres to all state and federal regulations.
3.1-2	Program advertising or its placement must not be deceptive about the functionality, features, or content of the underlying program.
3.1-3	Print and Web Advertising must include: <ul style="list-style-type: none"> Language outlining that the service is free A resource (such as a website or phone number) where subscribers can reference all terms and conditions. The frequency of the messaging



Cross Carrier Standards

3.1-3	<ul style="list-style-type: none"> • Instructions for obtaining help (HELP) • If the program is recurring, instructions on cancelling or opting-out of the service must be included. If the program being advertised is non-recurring, then STOP messaging is not required.
3.1-4	Instructions on using the HELP keyword (i.e. Text HELP for help) may be provided in lieu of full customer service contact information in advertising materials.
3.1-5	If space is not available for the full terms and conditions, the location where the full terms and conditions may be accessed without charge to the consumer must be disclosed (e.g. via a website address and/or toll free phone number).

3.2 Opt In

	Guideline
3.2-1	Content providers must obtain opt-in approval from subscribers before sending them any SMS or MMS messages or other content from a short code.
3.2-2	FTEU programs require single opt-in
3.2-3	As with standard rate programs, FTEU programs should be subject to single opt-in mechanisms. The mechanism should be sufficient to establish the subscriber's willingness to participate in the program and possession of the handset. The opt-in applies to the specific program and should not be used as a blanket approval to promote other programs, products or services.
3.2-4	Frequency of messages: For programs whereby the user defines the rate of message occurrence, a confirmation MT or Help MT does not need to include a defined frequency. All other frequency requirements will follow the standard rate frequency guidelines.

3.3 Opt Out

	Guideline
3.3-1	Subscribers should be able to stop participation in a FTEU program when desired, except for messages related to their underlying mobile service.
3.3-2	Content providers must offer subscribers the opportunity to cancel the service at any time. The following rules govern program opt-out:
3.3-3	<p>A subscriber must be able to stop participating and receiving messages from any program by sending STOP to the short code used for that program.</p> <ul style="list-style-type: none"> • END, CANCEL, UNSUBSCRIBE or QUIT should also be opt-out key words for all programs; however, content providers should feature the word STOP in their advertising and messaging. • A content provider must process a stop message from a subscriber regardless of the keyword STOP's case sensitivity. The STOP keyword must work in the native language of the program. In a non-English program, the English keyword must not return an error message. • Short code programs must ignore subsequent non-keyword text included in STOP MOs. • Short codes running MMS programs should handle the STOP keyword correctly, regardless whether the subscriber sends the keyword via MMS or SMS. • When sent, these words cancel the subscriber's previous opt-in for messaging.



Cross Carrier Standards

3.3-4	If the subscriber is participating in multiple programs on the short code, there are two options for the content provider when a subscriber sends an opt-out request: 1) The content provider sends a menu of the programs the subscriber is subscribed to and the subscriber has the responsibility to reply with the specific keyword to the specific program they would like to be opted out of. To ensure subscribers also have a way to opt-out of all programs within this menu, STOP ALL must be added to the menu choices. The stop menu message does NOT need to contain i) "Free Msg" ii) Sponsor contact information. 2) Or if the subscriber sent STOP ALL to the short code, they are opted-out of all programs they were enrolled in on that short code.
3.3-5	When STOP, or any of the opt-out keywords above, is sent to a program, the program must respond with an MT message, whether or not the subscriber is subscribed to the program or not.
3.3-6	When the user is subscribed to a recurring program, an MT message confirming the opt-out must be sent to the subscriber. This must be a free message. This message should reference the specific program the subscriber has opted-out from. No further messages should be sent to the subscriber from this program, including marketing messages for any related or unrelated programs.
3.3-7	When the user is not currently subscribed to a recurring program, or the program is a one-time program where the subscriber will not receive additional messages, then an MT message may be sent that only confirms that the user is not subscribed to any programs on this short code and indicates that no further messages will be sent.
3.3-8	This STOP command functionality requirement applies to all programs, including one-time use programs where the subscriber will not receive additional messages. This is to avoid subscriber confusion around the use of the STOP command.
3.3-9	The STOP command should never result in an error being sent back to the subscriber.
3.3-10	The content provider must record and store all opt-out transactions.

3.4 Terms & Conditions

	Guideline
3.4-1	Terms and Conditions at a minimum must contain the following:
3.4-2	<ul style="list-style-type: none"> STOP instructions in BOLD lettering
3.4-3	<ul style="list-style-type: none"> HELP instructions in BOLD lettering
3.4-4	<ul style="list-style-type: none"> Program sponsor information, defined as the program name, company name, or brand associated with the campaign
3.4-5	<ul style="list-style-type: none"> For free to end user programs: Disclose that standard carrier messaging charges do not apply to messages received as part of the service (where relevant, list on a carrier-by-carrier basis whether this applies).
3.4-6	<ul style="list-style-type: none"> Customer Service Contact Information: either a toll-free number, a web submission form or an email address.
3.4-7	<ul style="list-style-type: none"> Guidance on the frequency with which the subscriber may expect to receive messages for the duration of the program. Note that for many applications, this cannot be precisely predetermined by the content provider. In this case, the guidance should relate to the expected message frequency under normal circumstances.
3.4-8	All material terms and conditions of the program should be clearly communicated.
3.4-9	Carrier compatibility - clearly and conspicuously disclose that content is not available on all carriers, as applicable. Include list of supported carrier names whilst excluding all other carrier names.



Cross Carrier Standards

3.4-10	If the content provider offers multiple services, separate T&C's per service should be provided instead of generic T&C's that cover all offered services.
3.4-11	If a checkbox is used to indicate a consumer's acceptance of the terms and conditions, it is not permissible for the checkbox to be pre-checked.

3.5 HELP Guidelines

	Guideline
3.5-1	Help messaging commands, phone numbers, URL's, and email addresses should result in the subscriber receiving help with his issue. Dead ends that do not provide a manner in which the subscriber may resolve his issue is not acceptable.
3.5-2	<p>A subscriber can receive help information by sending the word HELP to any program. The HELP keyword should work on all short code programs. HLP is optional for HELP, but not required.</p> <ul style="list-style-type: none"> A content provider must process a help message from a subscriber regardless of the keyword's case sensitivity. For short codes running MMS programs, a help response should be returned whether the subscriber sends in HELP to the short code via MMS or SMS The HELP keyword must work in the native language of the program. In a non-English program, the English keyword must not return an error message.
3.5-3	To help subscribers understand their participation, each program should respond with the program details listed below when the subscriber sends the keyword HELP to the program short code.
3.5-4	<ul style="list-style-type: none"> Identity of program sponsor—This is defined as the program name, company name, or brand associated with the campaign.
3.5-5	<ul style="list-style-type: none"> Customer support info — Either a toll-free number or Web address, or e-mail address
3.5-6	<ul style="list-style-type: none"> Service description of program — For example, ABC Bank Alerts.
3.5-7	<ul style="list-style-type: none"> Opt-out information
3.5-8	<p>If the short code has multiple programs (keywords) on the same short code, the application should respond in one of two ways:</p> <ol style="list-style-type: none"> 1) If the subscriber has opted in to only one program, the application should supply the information for the program the subscriber is opted-in to. 2) If the subscriber has opted-in to multiple programs, the application should present a multiple-choice question asking the subscriber what program they would like help on. The first help menu does NOT need to include: "Free msg", STOP, Or Sponsor Contact Information <p>The menu should contain a question asking what the subscriber seeks help with and a list of options for the user to get help on. Once the user has identified the program they want help with, the appropriate help information must be in the subsequent MT.</p>
3.5-9	When HELP is sent to a program, the program must respond with an MT message, whether or not the subscriber is subscribed to the program, and whether the program is a subscription program or not. HELP must always result in a response. Help responses can vary dependent on whether you're signed up for the program or not.



FTEU Examples

EXAMPLE: FTEU Single Opt In

Cross Carrier Examples: Legend

Web, TV, In-Store,
Promotional Poster

Text Message

Mobile Web/ WAP

Call to Action

The following is advertised on web, television, in-store promotional poster, etc.:

Program sponsor →	Lenders Bank daily bank balance alerts.
Service Description/Cost →	Txt 'balance' to 43210 to get daily bank balance.
Customer Support Info →	Txt HELP for help.
Opt Out Info →	To stop txt STOP.
Frequency of messaging →	Get 1 msg/day.

Step 1:

User responds to call of action and sends MO "balance".

Step 2: Confirmation MT

User receives the following MT Message:

Free message declaration & Service description →	Free Lenders Bank balance alerts
Frequency of messaging →	Get 1 msg/day.
How to get help →	Reply HELP for help.
How to stop →	Reply STOP to cancel.

Step 3: MT Alert

User receives the following MT Message:

Free message declaration →	Free Lenders Bank alert - The balance for account #009221 is \$12,998.23.
Alert →	

EXHIBIT G

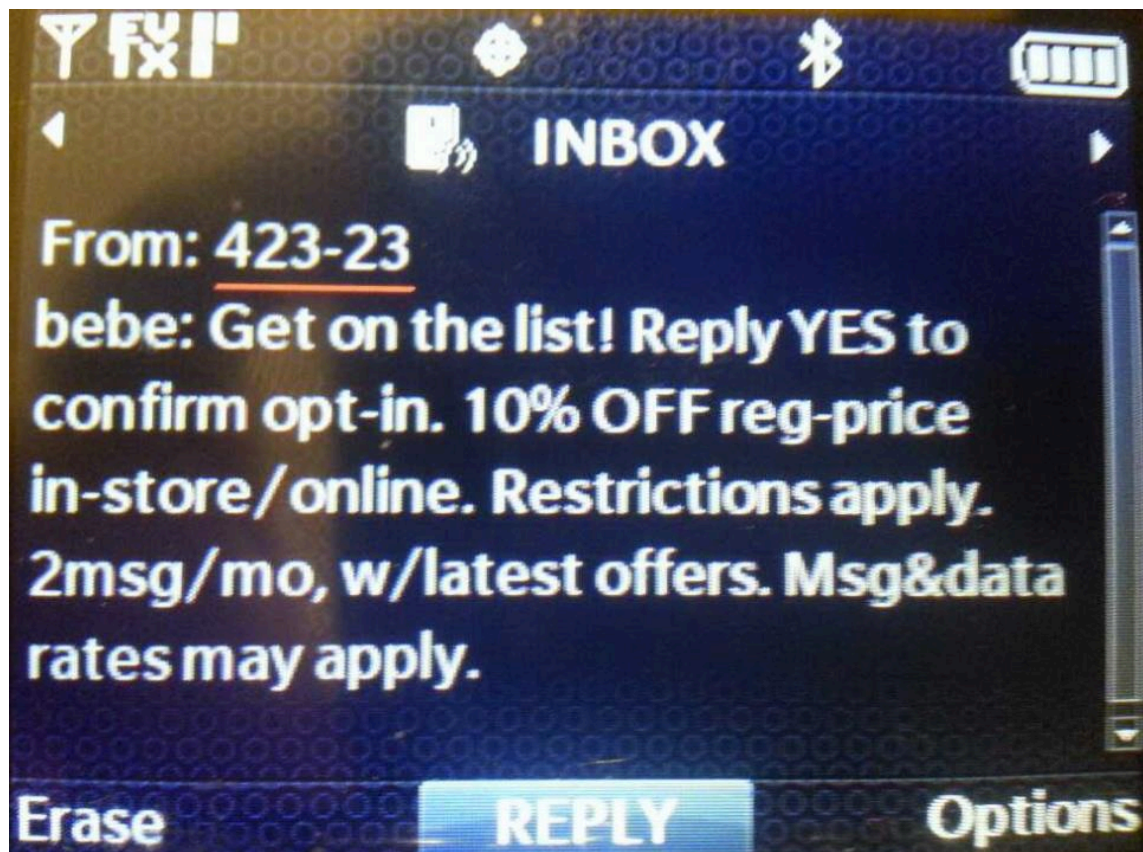


EXHIBIT H



Air2Web, Inc.
1230 Peachtree Street, NE
Suite 1200
Atlanta, Georgia 30309
Telephone: (404) 942-5300
Facsimile: (404) 815-7708

AIR2WEB APPLICATION AND SERVICES AGREEMENT ("Agreement")

Company Name Bebe Stores Inc			Contract Date 3/30/07
Company Address 400 Valley Drive			Effective Date 4/2/07
City Brisbane	State CA	Zip Code 94005	Telephone 415 657 4513
Company Authorized Representative Marc Viale Director Database Marketing			Facsimile 415 657 4247
Company Primary Contact Diana Palmer Marc Viale			Email Address mviale@bebe.com
Accounts Payable Contact Diana Palmer	Phone Number 415 657 4238	Email Address dpalmer@bebe.com	
Salesperson Mont Emery	Phone Number 404 942 5350	Email Address	

Air2Web, Inc. ("Air2Web") and the above-listed company ("Company") hereby agree that all products and services provided to Company by Air2Web shall be furnished only in accordance with the terms and conditions of this Agreement. The parties agree that this Agreement consists of the General Terms and Conditions contained on the following page, and any Schedule that is applicable. The parties further agree that this Agreement constitutes the complete and exclusive Agreement between them regarding the matters described herein and shall supersede and prevail over any prior proposals, purchase orders or other communications between them, oral or written, relating to the subject matter hereof, or any subsequent purchase orders or other standardized business forms.

- Schedule A** Application License Agreement. Air2Web shall license the computer software described in Schedule A to the Company on the terms and conditions set forth therein.
- Schedule B** Customization and Setup Services. Air2Web shall perform the Services described in Schedule B on the terms and conditions set forth therein.
- Schedule C** Content Delivery Services. Air2Web shall transmit Content between the Company and Carriers on the terms and conditions set forth in Schedule C.
- Schedule D** Air2Web Fees. The Company shall be obligated to pay Air2Web fees for all software licensed to the Company and services performed by Air2Web as set forth on Schedule D.
- Schedule E** Carrier Mandated Content Standards. Written standards set by Carriers which describe the type of Content that they will not transmit over their networks are set forth in Schedule E.
- Schedule F** List of Current Carriers. The providers of wireless messaging services with which Air2Web has contracted as of the Effective Date are set forth in Schedule F.
- Schedule G** Service Level Standards. Air2Web's Service Level Standards for Delivery Services are set forth in Schedule G.

[Important additional terms contained on Page 2 and Attachments attached hereto]

Air2Web, Inc.

bebe Stores, Inc.

By: 

Tom Williams, Chief Financial Officer

By: 

Signature of above-listed Authorized Representative

[SEAL]

[SEAL]

BEBE-A-CGW-001-0-0307

CONFIDENTIAL

bebe000001

GENERAL TERMS AND CONDITIONS

Definitions.

Air2Web Gateway Platform. Air2Web's scalable proprietary wireless platform containing a core infrastructure and computer programs enabling the delivery of Content between the Company and the Interactive Wireless Devices of Subscribers through the Carriers.

Carriers. Providers of wireless messaging services to Subscribers via wireless telecommunications networks. The Carriers with whom Air2Web has contracted for connectivity as of the Effective Date are listed in Schedule F.

Content. All data, information, and other content provided by Company to be sent to Interactive Wireless Devices of Subscribers via the Air2Web Gateway Platform, including SMS.

Content Standards. Written standards set by the Carriers from time to time which describe the type of Content that they will not transmit to Subscribers. For purposes of this Agreement, the Content Standards include the Content Standards established by the Carriers as of the Effective Date which are set forth on Schedule E attached hereto, and any additions, deletions or changes to such Content Standards that are hereafter announced by the Carriers from time to time.

Customization Services. Customization Services shall have the meaning defined in Schedule B hereto.

Delivery Services. The service of delivering the Company's Content to Carriers over the Air2Web Gateway Platform.

Documentation. The standard user documentation published by Air2Web describing the use of the Application, including any tutorial presentation of the capabilities of the Application and any technical documentation that describes the design of the Application.

Hosting Services. Hosting Services shall have the meaning defined in Schedule A hereto.

Interactive Wireless Devices. Any and all wireless devices capable of sending and receiving SMS or displaying Content sent by the Company.

Party(ies). The parties to this Agreement are collectively referred to herein as the Parties and each a Party.

Premium Content Services. Delivery Services pertaining to Content delivered to Subscribers for a fee payable by the Subscriber, which fee will be shared by the Carrier, Air2Web and the Company in the manner described in Schedule D hereto.

Services. The Hosting Services, Customization Services and Delivery Services, collectively.

SMS. A short message service text message with up to one hundred sixty (160) characters.

Subscribers. Any and all persons who have Interactive Wireless Devices capable of receiving Content and who have subscribed to send and receive Content via the Air2Web Gateway Platform through the Carrier(s).

Third Parties. Any and all Persons not a Party to this Agreement.

Requirements to Use Services. Company agrees: (a) to provide true, accurate, current, and complete information about the Company and any Authorized User, including Company's e-mail address, either directly to Air2Web or through the Services, (b) to maintain and promptly update the information to keep it true, accurate, current, and complete, (c) to accept communications from Air2Web at its e-mail address. Company agrees that Air2Web may provide notices, statements, and other communications to Company through e-mail (however, if such notice, statement or other communication is related to the warning notice of renewal (See Section entitled "Term"), breach of this Agreement or any legal related matters, including but not limited to indemnification matters, then it shall be accompanied by notice in writing sent via US Mail), posting on the Services interface, or other electronic transmission. Company agrees to obtain access to the internet, either directly or through devices that access web-based content, and pay any service fees associated with such access. Company will provide all equipment necessary to make such connection to the Internet, including a computer and modem or other access device, as well as a web browser. The web browser must support SSL encryption in order for the security features of the Services to function.

Access to Services, Access Security and Passwords. The Services may be accessed only by the Company's employees, agents or representatives of the Company who are authorized by the Company to use the Services pursuant to this Agreement (hereinafter, an "Authorized User"). A unique login ID and password will be issued by the Air2Web to each Authorized User

designated in writing by the Company from time to time. Each Authorized User may only access the Services using the login ID and password assigned to the Authorized User, and no person may access the Services using a login ID and password other than the Authorized User to which the login ID and password are assigned. Company is responsible for the confidentiality and use of login ID(s), password(s), and account number(s) provided to the Company and any Authorized User. Company will be responsible for all electronic communications, including account registration and other account holder information, e-mail and financial, and other data ("Electronic Communications") entered through or under Company's or an Authorized User's access number(s), password(s) or account number(s). Air2Web will act as though any Electronic Communications it receives under Company's or an Authorized User's access number(s), password(s) or account numbers(s) will have been sent by Company. Air2Web may disclose Electronic Communications if required to by law or in the good faith belief that such disclosure is reasonably necessary to: (a) comply with a legal process, (b) enforce this Agreement, or (c) respond to claims that any Electronic Communications violate the rights of third parties. Company agrees to notify Air2Web immediately of any loss or theft or unauthorized use of any login ID(s), password(s) and/or account number(s). As a further condition to use of the Services, the Air2Web may require that each Authorized User agree to use the Services in accordance with this Agreement and Air2Web's terms of service, as reasonably changed from time to time, which Agreement shall be in the form of written notice via US Mail containing the terms and conditions of service to which the Authorized User will have to consent in order to access the Services.

Changes in Services. The Services pursuant to this Agreement shall be subject to reasonable modification in a manner applicable to all customers of the Services, including as a result of changes made by the relevant Carrier(s) to the corresponding services provided by the Carrier(s) to Air2Web. If any such change is made which has any effect on the rights and obligations of the Parties hereunder, then (i) Air2Web shall notify Company in writing of the relevant changes as soon as reasonably practicable.

Payment Policy. Unless otherwise stated in writing in the attached Schedules, all invoices are due within thirty (30) days from receipt and will be invoiced on a monthly basis. Unless subject to a good faith dispute or legitimate case in controversy about which Company notifies Air2Web prior to the original due of the disputed amount, Air2Web has the right to suspend performance under this Agreement at any time that the Company is in default hereunder. In addition, in the event the Company fails to pay any past due amount hereunder, Air2Web may set off any other amounts that Air2Web owes the Company against such amount.

Taxes. The Company agrees to pay any sales, use, or other tax (excluding any tax that is based on Air2Web's income), duty, or other charge of any kind or nature that is levied or imposed by any governmental authority or regulatory body in connection with this Agreement or the Services provided hereunder.

Term. This Agreement shall remain in effect for a period of one (1) year after the Effective Date of the Services ("Initial Term") unless sooner terminated pursuant to the terms hereof. This Agreement shall automatically renew for successive one (1) year terms ("Renewal Terms") upon expiration of the Initial Term or any Renewal Term unless either Party hereto provides notice to the other Party of its intent not to renew this Agreement at least ninety (90) days in advance of the scheduled expiration of the Initial Term or any Renewal Term. Air2Web agrees to provide Company with notice in writing, via U.S. Mail, of the scheduled expiration of the then current term not less than one hundred twenty (120) days prior to the expiration of such term.

Termination. This Agreement may be terminated by either Party upon breach by the other Party of the terms contained herein and failure to cure same within thirty (30) days after receipt of notice from the non-breaching Party describing the alleged breach. Upon expiration or termination of this Agreement for any reason, Company shall, upon receipt of an invoice, pay to Air2Web all undisputed amounts owed hereunder as of the effective date of termination within thirty (30) days of receipt of such invoice. Company may terminate this Agreement at any time upon thirty (30) days written notice to Air2Web and without incurring any penalty, obligation, or liability other than for those undisputed services previously rendered. In the event that Company terminates this Agreement without cause, it may do so without incurring any penalty, obligation, or liability if it notifies Air2Web thirty (30) days in advance and pays Air2Web for those undisputed services previously rendered. Air2Web shall not terminate without cause during any term.

Confidential Information. Each Party (the "Receiving Party") undertakes to retain in confidence the terms of this Agreement and all other non-public information, pricing, business methods, technology, materials and know-how of the other Party disclosed or acquired by the Receiving Party pursuant to or in connection with this Agreement which is either designated as proprietary and/or confidential or, by the nature of the circumstances surrounding disclosure, ought in good faith to be treated as proprietary and/or confidential ("Confidential Information"); provided that each Party may disclose the terms and conditions of this Agreement to its parent, subsidiaries, and affiliates and to its immediate legal and financial

consultants on a confidential basis in the ordinary course of its business. Neither Party shall use any Confidential Information with respect to which it is the Receiving Party for any purpose other than to carry out the activities contemplated by this Agreement. Each Party agrees to use commercially reasonable efforts to protect Confidential Information of the other Party, and in any event, to take precautions at least as great as those taken to protect its own confidential information of a similar nature. Each Party shall also notify the other promptly in writing in the event such Party learns of any unauthorized use or disclosure of any Confidential Information that it has received from the other Party, and will cooperate in good faith to remedy such occurrence to the extent reasonably possible. The restrictions set forth in this Paragraph shall not apply to any information that: (i) was known by the Receiving Party without obligation of confidentiality prior to this Agreement; (ii) was in or entered the public domain through no fault of the Receiving Party; (iii) is disclosed to the Receiving Party by a Third Party legally entitled to make such disclosure without violation of any obligation of confidentiality; (iv) is required to be disclosed by applicable laws or regulations (but in such event, only to the extent required to be disclosed); or (v) is independently developed by the Receiving Party without reference to any Confidential Information of the other Party. Upon request of the other Party, each Party shall return to the other all materials, in any medium, which contain or reveal all or any part of any Confidential Information of the other Party. Each Party acknowledges that breach of this Section by such Party would result in irreparable harm to the other Party, for which money damages would be an insufficient remedy, and therefore that the other Party shall be entitled to seek injunctive relief to enforce the provisions of this Paragraph. Such restrictions shall remain in effect during the term hereof and for a period of ten (10) years after termination of this Agreement for any reason; provided, however, that if any such Confidential Information constitutes a trade secret (as defined in the Georgia Trade Secrets Act), such restrictions shall remain in effect for so long beyond such period as such Confidential Information continues to qualify as a trade secret as so defined. This Paragraph shall survive termination of this Agreement.

Subscriber Information. Both parties shall use and handle all Subscriber information subject to all laws, rules, regulations, codes, guidelines, Carrier policies and directives in force from time to time applicable to confidentiality and personal data protection. Company understands and agrees that Carrier(s) shall exclusively own all information that they and their affiliates collect directly from Subscribers, from Subscriber's usage of Interactive Wireless Devices on the Carriers' networks or roaming partner networks, or from Carriers' web site including, without limitation, personally identifiable information, such as name, home and e-mail address, wireless telephone number and residential telephone number. Company shall not authorize or encourage any Third Party to collect any Subscriber information in connection with any of the Services contemplated by this Agreement. If Company collects any such Subscriber information, Company may only use such information to the extent necessary to deliver Content to Subscribers. In no event may Company disclose Subscriber information to any Third Party. Air2Web shall not use Subscriber information in any manner other than for purposes set forth under this Agreement.

Intellectual Property Rights of Company. The Company represents that it owns and retains all right, title and interest in and to its trademarks, service marks, logos, images to be used hereunder, and other proprietary indicia. The Company shall have all rights, title and interest in and to all software, documentation, derivative works and other intellectual property rights that are acquired, developed, designed, created or contributed by Company in relation to the Company System.

Intellectual Property Rights of Air2Web. Air2Web represents that it owns all title and rights of ownership in the Application, the Documentation and Services, as well as enhancements, modifications, derivative works or changes made by Air2Web to the Application, the Documentation and the Services, and that they remain with Air2Web and are protected by trademark, copyright, patent and/or trade secret laws. Company agrees that it shall not acquire hereunder any right, title, or interest in the Application, the Documentation and Services, or any enhancements, modifications, derivative works or changes made thereto, except the right to use them in accordance with this Agreement. In addition, Air2Web retains all right, title and interest in and to its trademarks, service marks, logos and other proprietary indicia that are acquired, developed, designed, created or contributed by Air2Web in relation to the Application or Services. Company agrees to take all reasonable steps necessary to protect Air2Web's proprietary rights in the Application, Documentation and the Services. Air2Web represents and warrants that the Application and the Services do not infringe any United States patent, copyright, trademark, trade secret, or any other proprietary right of any Third Party, and hereby indemnifies and holds the Company, its affiliates and its customers harmless against any claim of infringement from a Third Party. In the event the continued use of the Application or the Services is held or is likely to be held to constitute an infringement, Air2Web, at its expense, may (i) modify the Application or Services so that they are non-infringing so long as the Application or Services, as modified, performs substantially the same functions that it performed before the modification, (ii) procure for the Company the right to continue using the Application or the Services, or (iii) allow the Company to terminate this Agreement without liability to Air2Web with a pro rata refund to Company for prepaid amounts for Services not rendered prior to the effective date of termination.

DISCLAIMER OF WARRANTIES. THE APPLICATION AND THE SERVICES ARE PROVIDED "AS IS" AND WITHOUT ANY WARRANTY OF ANY KIND WHATSOEVER, AND AIR2WEB DISCLAIMS ALL WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING, WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. THIS SECTION SHALL SURVIVE TERMINATION OF THIS AGREEMENT.

LIMITATION OF LIABILITY. THE PARTIES HAVE NEGOTIATED THIS AGREEMENT WITH DUE REGARD FOR THE BUSINESS RISK ASSOCIATED WITH THE ARRANGEMENTS DESCRIBED IN THIS AGREEMENT. EXCEPT FOR LIABILITIES SUBJECT TO THE INDEMNITY PROVISIONS OF THIS AGREEMENT OR FOR FEES DUE AIR2WEB BY COMPANY OR CLAIMS OF A PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, UNDER NO CIRCUMSTANCES WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY IN ANY MANNER, UNDER ANY THEORY OF LIABILITY, WHETHER IN CONTRACT, TORT OR ANY OTHER THEORY, FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES ARISING FROM THE SERVICES. IN ANY CASE, THE CUMULATIVE AGGREGATE LIABILITY OF EACH PARTY FOR ALL LOSSES, CLAIMS, SUITS, CONTROVERSIES, BREACHES OR DAMAGES FROM ANY CAUSE WHATSOEVER (OTHER THAN CLAIMS SUBJECT TO THE INDEMNITY PROVISIONS OF THIS AGREEMENT OR FOR FEES DUE AIR2WEB BY COMPANY OR BREACHES OF CONFIDENTIALITY OR CLAIMS OF A PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT) AND REGARDLESS OF THE FORM OF ACTION OR LEGAL THEORY SHALL BE LIMITED TO THE ACTUAL DIRECT OUT-OF-POCKET EXPENSES THAT ARE REASONABLY INCURRED BY THE NON-BREACHING PARTY AND SHALL NOT EXCEED THE GREATER OF (A) THE AMOUNT PAID BY COMPANY TO AIR2WEB DURING THE SIX (6) MONTHS IMMEDIATELY PRIOR TO THE DATE THE BREACH OCCURRED AND (B) ONE HUNDRED TWENTY THOUSAND DOLLARS (\$120,000.00). COMPANY SPECIFICALLY UNDERSTANDS AND AGREES THAT AIR2WEB SHALL NOT BE LIABLE TO COMPANY OR THE CUSTOMERS OF COMPANY FOR ACTS OR OMISSIONS OF ANY THIRD PARTY (OTHER THAN THIRD PARTY SUBCONTRACTORS OF AIR2WEB OR THIRD PARTIES WITHIN AIR2WEB'S CONTROL), OR FOR INFORMATION PROVIDED THROUGH THE COMPANY SYSTEM, OR FOR CAUSES BEYOND THE REASONABLE CONTROL OF AIR2WEB. THIS SECTION SHALL SURVIVE TERMINATION OF THIS AGREEMENT.

Company Indemnity. Company, at its own expense, will indemnify, defend and hold harmless Air2Web, its Affiliates, and the Carrier(s) through whom Content is routed and their respective employees, representatives, agents, officers and directors against any claims, losses, liabilities, costs, expenses or damages (including reasonable attorney's fees) incurred by reason of any claim, demand, lawsuit or action initiated by Third Parties based on or relating to, or allegation of: (i) any breach by Company of any of its representations and warranties in this Agreement; (ii) any services provided by Company or its subcontractors relating to the Services provided under this Agreement; or (iii) an allegation that all or any part of the Content actually provided by Company or a message transmission by a Subscriber to Company violates any local, state or federal law, rule, or regulation or the Content Standards ("Claims"). In this regard, Air2Web will promptly notify Company of Claims, and it will permit Company to assume and control the defense of Claims. Air2Web, however, will have the right to employ separate counsel and participate in the defense of Claims. Company shall have the sole authority to defend, compromise, settle or otherwise dispose of the Claims; provided that Company shall not agree to any disposition or settlement of a Claim that admits liability or imposes duties of performance or payment on Air2Web without Air2Web's prior written consent. In the event the Parties agree to settle Claims, Company agrees not to publicize the settlement without first obtaining Air2Web's written permission, which permission shall not be unreasonably withheld.

Air2Web Indemnity. Air2Web, at its own expense, will indemnify, defend and hold harmless Company and its Affiliates and their respective employees, representatives, agents, officers and directors against any claims, losses, liabilities, costs, expenses or damages (including reasonable attorney's fees) incurred by reason of any claim, demand, lawsuit or action initiated by Third Parties based on or relating to, or allegation of: (i) any breach by Air2Web of any of its representations and warranties in this Agreement; (ii) any services provided by Air2Web or its subcontractors relating to the Services provided under this Agreement, (iii) intellectual property violations initiated by third parties as set forth in the Section titled "Intellectual Property Rights of Air2Web" above. In this regard, Company will promptly notify Air2Web of Claims, and it will permit Air2Web to assume and control the defense of Claims. Company, however, will have the right to employ separate counsel and participate in the defense of Claims. Air2Web shall have the sole authority to defend, compromise, settle or otherwise dispose of the Claims; provided that Air2Web shall not agree to any disposition or settlement of a Claim that admits liability or imposes duties of performance or payment on Company without Company's prior written consent. In the event the Parties agree to settle Claims, Air2Web agrees not to publicize the settlement without first obtaining Company's written permission, which permission shall not be unreasonably withheld.

Remedies. Each Party acknowledges that breach by it of certain of the terms set forth herein, including any breach arising out of or relating to an alleged violation of the other Party's intellectual property rights, would result in irreparable harm to the other Party for which monetary damages alone would be an insufficient remedy. Thus, although nothing herein will prohibit pursuit of any remedies available against any Party under applicable law (which shall be cumulative with those remedies set forth herein), each Party specifically agrees that, in the event of any threatened or actual breach of any such terms by it, the other Party shall be entitled to injunctive relief or other similar remedy from a court of competent jurisdiction.

Governing Law; Arbitration; Attorney's Fees. This Agreement shall be governed by and construed in accordance with the laws of the State of California without regard to its principles of conflicts of laws. Nothing in this Agreement shall be deemed as preventing either Party from seeking relief, or any other remedy, from any court having jurisdiction of the Parties and/or the subject matter of dispute. Either Party shall be entitled to recover its attorney's fees and costs from the other Party in the event it utilizes the services of an attorney to enforce any provision of this Agreement or to collect any amounts due hereunder, and it is the prevailing Party.

Mutual Representations and Warranties. Each Party to this Agreement represents and warrants that: (a) it has the full corporate right, power and authority to enter into this Agreement and to perform the acts required; (b) its actions in connection with this Agreement will be performed in compliance with all applicable laws, rules and regulations; (c) its execution of this Agreement and performance of its obligations under this Agreement do not and will not violate any other agreement to which it is a Party; and (d) this Agreement will constitute the legal, valid and binding obligation of such Party when executed and delivered.

Force Majeure. Neither Party shall be liable for any delay or failure to perform per the terms of this Agreement caused by Acts of God or other causes beyond the parties' control and without fault or negligence. In such event, either Party may reasonably suspend this Agreement in whole or in part for the duration of the delaying cause, including delay of payment for services not yet rendered. Both parties shall resume performance under this Agreement immediately after the delaying cause ceases and the initial term of this Agreement shall be extended for a period of time equivalent to the length of time the excused delay occurred.

Relationship of Parties. Nothing contained in this Agreement shall be construed to create a partnership, agency, joint venture, or employer/employee relationship between the parties. Neither Party has the authority to assume or create any obligation or responsibility, express or implied, on behalf of, or in the name of, the other Party or to bind such other Party in any way. Each Party shall be responsible for wages, taxes, withholding, insurance, hours and conditions of employment of its personnel during the term hereof.

Assignment. Neither party may assign this Agreement without the written consent of the other party; provided, however, this Agreement may be assigned without the written consent of the other Party by either Party to any affiliate of such Party or any entity acquiring all or substantially all of assets of such Party. Either Party may also assign this Agreement as collateral to any entity providing financing to such Party. Any assignments to a financing Party shall not relieve Air2Web from its obligations under this Agreement. In the event of Assignment, the assignor shall remain liable under this Agreement. The assignee must be as competent and financially viable as Air2Web. This Agreement shall be binding upon and shall inure to the benefit of the successors and permitted assigns of Company and Air2Web.

Miscellaneous Provisions. This Agreement and the representations, warranties and covenants contained herein shall survive consummation of the transactions herein contemplated. If any provision of this Agreement is held invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall in no way be affected or impaired thereby. This Agreement may be executed in any number of counterparts, each of which shall constitute an original. Section headings have been inserted in this Agreement as a matter of convenience and for reference only and it is agreed that such section headings are not a part of this Agreement and shall not be used in the interpretation of any provision of this Agreement. Whenever used herein, the singular shall include the plural, the plural shall include the singular, and the use of any gender shall be applicable to all genders.

Entire Agreement; Modifications. This Agreement constitutes the entire agreement between the parties hereto and all prior agreements, understandings, obligations or statements by and between the parties concerning the subject matter hereof will be merged into and be superseded by this Agreement and shall be of no further force and effect. No failure or delay on the part of any Party in exercising any right, power, privilege or remedy arising hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power, privilege or remedy preclude any other or future exercise thereof or the exercise of any other right, power, privilege or remedy. No notice to or demand on any Party in any case shall entitle it to any other or further notice or demand in similar or other circumstances. No modification, amendment or waiver of any

provision of this Agreement, nor any consent to any departure by any Party from the terms hereof, shall be effective unless the same be in writing and signed by all parties hereto.

Use of Name/Images. Air2Web shall not be permitted to use Company's name, logo, testimonials, images, and case studies in its advertising and marketing materials without Company's prior written consent, which consent may be revocable at any time. Air2Web will not publish any advertising or marketing materials containing details of Company's business or this transaction with Air2Web without Company's prior written consent, which consent may be revocable at any time.

SCHEDULE A

SOFTWARE LICENSE AGREEMENT

1. **Definition of Application.** The Application is computer software owned by Air2Web known as *Campaign Manager and Mobility Engine*, which has the following features:

- a) *Connections to U.S. Carriers to supply bi-directional SMS messaging*
- b) *Web-based software for text campaign creation, management and reporting*
- c) *WAP hosting for binary content and optimization*
- d) *Company's access to mobile numbers acquired through bebe mobile marketing campaign*

2. **Grant of License.** Air2Web hereby grants Company a limited, nonexclusive, nontransferable license to use the Application to facilitate and manage the delivery of Content over the Air2Web Gateway Platform in accordance with the terms set forth herein. Unless otherwise specified in writing, Company shall not, nor shall it permit others to: (a) use the Application outside of the context set forth herein or for purposes other than those set forth herein; (b) download, copy, recreate, disassemble, modify, translate, reverse engineer or decompile the Application; or (c) assign, sell, sublicense, lease, or otherwise transfer Company's right to use the Application as set forth herein. The Company shall also be entitled, free of charge, to all updates and upgrades to the Application and Documentation that are produced from time to time by Air2Web in its sole discretion.

3. **Access to Application.** The Application shall reside on one or more computers hosted and managed by Air2Web that are accessible only by the internet (the "Hosting Services"). The Company shall be responsible for the acquisition, configuration, monitoring, maintenance and management of all hardware and software at the Company's location necessary to access the Application, including local area networks, computers, software, telecommunications, internet access and devices, except that Air2Web shall provide the Company with all client-side software (if any) necessary to access and operate the Application.

4. **Setup Services.** Air2Web shall provide basic training assistance on usage of the Application, including phone support and, if required, NetMeeting sessions to explain the use of the Application and review the Documentation provided in association with the Application.

5. **Modifications to Application.** Air2Web shall not be obligated to make any alteration, modification, customization or enhancement to the Application that is necessary or desired for the Company's internal purposes, and subject to Customer's prior written approval, any such alteration, modification, customization or enhancement shall only be made by Air2Web at the Company's expense on such terms that are set forth in Schedule B attached hereto or a separate writing between Air2Web and the Company.

6. **Limited Warranty.** Air2Web warrants that for a period of ninety (90) days after implementation of the Application, the Application shall substantially perform in accordance with the Documentation. Company's sole and exclusive remedy and Air2Web's sole liability shall be for Air2Web, at Air2Web's sole option, to (i) replace the Application that does not meet the limited warranty, (ii) attempt to correct any defects which Company finds in the Application during the warranty period, or (iii) refund the license fee for the Application. Any replacement Application received by Company shall be warranted for the remainder of the original warranty period or for thirty (30) days, whichever is longer. If Company discovers a defect in the Application during the warranty period, Company shall provide written notice to Air2Web that includes (i) a statement that the Application does not substantially perform in accordance with the Documentation, (ii) a list of defects in the Application, (iii) detailed information regarding each defect. The limited warranty shall be null and void if (i) Company modifies or changes its copy of the Application in any way, or if any failure of the Application resulted from accident, misuse, abuse, or misapplication by Company, or its employees or agents, (ii) errors or defects are attributable to equipment malfunction, products other than the Application, use of the Application in conflict or contravention of the Documentation or the terms of this Agreement, or accident, neglect, misuse, or abuse of the Application; or (iii) Company does not provide the written notice to Air2Web as provided herein.

SCHEDULE B

CUSTOMIZATION AND SETUP SERVICES

1. Customization Services. Air2Web offers certain developmental and professional services to design and develop modifications or enhancements (hereinafter, "Modifications") to current or future Applications that utilize the Air2Web Gateway Platform (hereinafter, the "Customization Services"). The ultimate scope of such Customization Services, whether for design development, custom programming or other agreed upon services, shall be based upon the needs and determinations of Company as reflected in an applicable statement of work ("Statement of Work") and shall only be undertaken by Air2Web pursuant to a prior written Statement of Work entered into separately by the parties or as set forth herein. The Statement of Work shall be a separate agreement and its terms will not apply to the Services provided under this Agreement until it is signed by both parties.

2. Statement of Work. Air2Web shall not be obligated to make any Modifications to an Application unless the Company and Air2Web execute a Statement of Work to evidence the terms and conditions under which the Modifications will be made. From time to time, either Company or Air2Web may initiate a draft Statement of Work for the others' consideration. Once finalized with authorized signatures, the Statement of Work shall be an addendum to and subject to the conditions and terms of this Agreement. Each Statement of Work shall, at a minimum, include the following before services begin:

- a) commencement date;
- b) scope and definition of services to be performed;
- c) staffing committed by both Air2Web and Company;
- d) deliverables and dependencies committed by both parties;
- e) interim milestones, if any, and final completion date;
- f) budget estimate, or firm price if explicitly agreed, and billing schedule;
- g) incorporation of this Agreement by reference; and
- h) authorized signatures.

The parties may specify any further terms and conditions that are to be made part of the Statement of Work. The deliverables under a Statement of Work shall be deemed accepted by Company when such deliverable(s) have been implemented or delivered by Air2Web and made ready for use in accordance with the installation and operating specifications of the Statement of Work and Air2Web has tested the deliverable to insure that it operates in accordance with the specifications contained in the Statement of Work. In event of conflicting terms with the Service Agreement, the Statement of Work shall govern.

3. Ownership of Work Product of Customization Services. The Company and Air2Web agree that Air2Web shall be the sole owner of any Modifications to an Application that are created as a result of any Statement of Work, and that the Company shall be entitled to use the Modifications on the same terms, and to the same extent, as the Company is authorized to use the Application. In addition, Air2Web shall retain the right to use the ideas, concepts, tools, templates, methods, processes, know-how, organization techniques and other intellectual property used by it in the development of the Modifications requested by the Company. Company acknowledges that Air2Web is in the business of licensing the Application and the Air2Web Gateway Platform to others, and providing Hosting and Delivery Services associated therewith, and that Air2Web may develop Modifications for other parties that are identical or similar to the Modifications developed for the Company. Nothing contained herein shall preclude or inhibit Air2Web from developing, marketing, using, licensing, providing or selling any products or services to third parties that are similar or identical in function, design or otherwise to those provided to the Company.

4. Limited Warranty. Any Modification to an Application shall be deemed a part of the Application, and Air2Web warrants the Modification only to the same extent that it warrants the Application, except that the time period during which Air2Web warrants the Modification shall be for ninety (90) days from the installation of the Modification.

SCHEDULE C

CONTENT DELIVERY SERVICES

1. SMS and Content Delivery Service.

- a) Air2Web Gateway Platform and Campaign Manager. Air2Web agrees to use commercially reasonable efforts to deliver Content provided by the Company to Carriers (for delivery to Subscribers) by means of the Air2Web Gateway Platform and Campaign Manager as described in this Agreement. Air2Web is responsible for obtaining and maintaining at its sole cost and expense the Air2Web Gateway Platform and Campaign Manager, and the Company shall not have any liability for the Air2Web Gateway Platform and Campaign Manager.
- b) Compliance with Laws, Regulations and Carrier Guidelines. Both parties shall comply with all applicable laws, rules, regulations, directives, statements, codes of practice and applicable Carrier guidelines with respect to the Delivery Services, text messaging in general and otherwise in connection with performing its obligations under this Agreement.
- c) Content Format. The Company shall provide Content to the Air2Web Gateway Platform in such format as Air2Web may require from time to time. Air2Web may reasonably amend the formats required for the Services by providing reasonable advance notice thereof. The Company shall provide at least thirty (30) days advance written notice to Air2Web for any change in the formatting of the Content.
- d) Content Delivery Limitations. The Air2Web Gateway Platform forwards Content delivered by the Company to Carriers for forwarding to Subscribers of the Carrier. However, Air2Web is not obligated to ensure the delivery of Content by Carriers to Subscribers, and the Company agrees that the Air2Web bears no liability to the Company or any Third Parties in the event a Carrier does not forward Content to a Subscriber. Air2Web will provide its standard reports to the Company indicating whether Content has been delivered to Subscribers.

2. Limitations on Content.

- a) Content Standards. The Company agrees to adhere to the Content Standards, and any changes to the Content Standards required by the Carriers from time to time, and agrees that no Content shall violate the Content Standards. In the event the Company fails to comply with the Content Standards, Air2Web, in addition to all other remedies available to it at law and equity, may suspend the Delivery Services after providing written notice of the breach, until such breach has been cured. If the Company fails to cure the breach within 30 days of Air2Web's written notification to the Company, Air2Web may terminate this Agreement without further liability, obligation or penalty.
- b) Blacklisted Numbers. The Company acknowledges that some or all Carriers have implemented a "blacklist" that contains the mobile phone numbers for Subscribers that do not want to receive text messages. If and when Carriers provide this blacklist to Air2Web, Air2Web will provide the blacklist to the Company, in which case the Company will not send any Content to any number on the blacklist.
- c) Content Disclaimer. The Company agrees that Air2Web and/or the Carriers, in their sole discretion, may reject sending all or part of any Content to Carriers. Air2Web will notify the Company in writing within five (5) business days if Content is being rejected by Air2Web and the reasons for the rejection. The Company agrees that Air2Web will not be liable for rejection of any Content. The Company is solely responsible for ensuring that the Content it supplies is accurate, complete and correct, and shall be solely responsible for all claims or liability arising from the distribution and publication of Content. Air2Web shall have no obligation to read, proofread or correct any Content supplied by the Company, nor shall have any responsibility for the accuracy, completeness or correctness of any Content supplied by the Company, nor shall it have any obligation to read any Content to determine whether it contains Confidential Information.
- d) Filtering. Air2Web reserves the right to filter or have filtered Content without the prior written permission of the Company, without assuming any obligation to filter such Content, to ensure compliance with this Agreement, Air2Web agreements with Third Parties and applicable laws and regulations. However, if Content is altered or filtered, then Air2Web shall notify Company prior to sending or posting messages containing such Content and await Company's prior approval to use Content. Any blocked Content will not be deemed to have been delivered to Carriers for purposes of determining applicable fees.

e) **Third Party Consents for Content.** The Company agrees not to send Content that requires a Third Party consent unless it has obtained that consent in writing. Air2Web may delay or suspend the delivery of any Content until the Company has provided Air2Web with evidence, reasonably satisfactory to Air2Web, that the Company is authorized to send the Content.

f) **Suspension.** Air2Web may, without terminating this Agreement and without any liability to the Company or any Third Party, immediately suspend part or all of the Delivery Services or the link between the Air2Web Gateway Platform and the Company System due to any of the conditions set forth below. Air2Web will notify the Company as soon as reasonably possible and if such suspension is a direct result of any action by the Company, the Company will take reasonable steps to fix such problems. The reasons for possible suspension include but are not limited to:

- i) Air2Web's reasonable belief that it is obligated to comply with an order, instruction or request of any court, administrative tribunal, governmental or regulatory body;
- ii) Air2Web's belief that the Content or any part thereof is, in Air2Web's reasonable opinion, in violation of the Content Standards or otherwise not in accordance with this Agreement;
- iii) Unauthorized or fraudulent use of the Delivery Services, or if the Company's use of the Delivery Services causes or may reasonably be expected to cause damage to the Air2Web Gateway Platform or to a Carrier's system; or
- iv) Any material breach by the Company of its obligations to Air2Web.

3. **Forecast.** If and when requested by Air2Web, the Company shall provide to Air2Web an estimate ("Forecast") of its usage of the Delivery Services. This Forecast will be for at least three (3) months, and thereafter a three (3) month Forecast shall be provided at the start of each calendar quarter (January 1st, April 1st, July 1st, October 1st) within at least the first ten (10) days of the applicable quarter. These Forecasts shall include the estimated number of total mobile originate and mobile terminate messages to be forwarded by Air2Web, Content traffic patterns, and peak messages per second. The Company shall inform Air2Web, as far in advance as possible, of any anticipated increase in the volume of messages to be transmitted or received by the Company. Air2Web shall have the right to regulate such volume or shut down the Delivery Services with written notice to the Company if Air2Web reasonably suspects or determines that the Air2Web Gateway Platform, the Delivery Services, any Air2Web services or any Carrier service will be materially impaired by such number of messages. Air2Web will work with the Company to develop a traffic pattern that will not impair the Air2Web Gateway Platform or Carrier systems as a result of increased traffic estimates.

4. **Subscriber Opt-in/Opt-out Mechanism.** Carriers currently require that a sender of Content have a means for a subscriber to "opt out" of receiving text messages. The Company shall provide a short code response, website, and customer care email in which Subscribers can indicate to the Company whether they wish to receive or cease receiving Content. For example, a response of "stop" to a text message would mean that the subscriber has "opted out" and should no longer receive text messages from the Company. The Company shall immediately comply with any Subscriber request to cease receiving Content. The Company shall provide contact information (at a minimum an email address) for the Company's customer service at the same time and in a noticeable location (i.e., on the same web page or in the same SMS) as Subscribers register for the Company's Delivery Services. The Company must include an obvious notice that "other charges may apply" at the same time and location (i.e., on the same web page or in the same SMS) as Subscribers register for the Company's Delivery Services.

5. **Representations and Warranties of Company.** Company represents, warrants and covenants to Air2Web that the Content (a) will not contain any material that is obscene, profane, libelous or defamatory; (b) will not violate or infringe any copyright, patent, trademark or trade secret or right of privacy or publicity or any other personal or proprietary right of Air2Web or any Third Parties; (c) will comply with the Content Standards; and (d) at the time of delivery to Air2Web, will not contain any viruses, worms, trap doors, back doors, timers, clocks, counter or other limiting routines, instructions or designs. Company further represents and warrants that it will not use the Delivery Services, or allow any Third Parties to use the Delivery Services, to engage in any spamming, mail-bombing, spoofing or any fraudulent, illegal, unauthorized or improper use.

6. **Carrier Customer Service Costs.** If any Carrier makes a charge to or deduction from payments to Air2Web for Premium Content Services, then Air2Web shall be entitled to recover from the Company the amount of any such charges or

deductions. Air2Web agrees to notify Company of any such charges or deductions and to provide the same level of detail (related to the charges) to the Company that is provided to Air2Web by the Carriers.

SCHEDULE D

AIR2WEB FEES

(Note: Air2Web reserves the right to change these fees at any time subject to Company's prior written consent)

- A. **SETUP SERVICES: \$5,000 WAIVED**
- B. **SHORT/LONG CODE FEES:** Air2Web will obtain two vanity short code on behalf of Company for the period of one (1) year. Additional shortcode fees are collected in advance, for periods of three months, and automatically renewed in accordance with the term of the contract. Additional shortcodes are available in three month increments. Vanity shortcodes are sold at the monthly rate of \$1,000 each. Basic shortcodes are sold at the monthly rate of \$500 each.
- C. **SMS MESSAGE FEE AND CAMPAIGN MANAGEMENT HOSTING FEE:** The first two months of this Agreement shall be \$5,500 U.S.D. per month; and thereafter, the fee shall be \$7,500 per month. Each month's payment includes two (2) vanity short codes, unlimited access to Air2Web's Campaign Manager product and up to 100,000 standard SMS messages per month. Up to six months' message rollover can be accumulated for any current month. For standard SMS messages delivered in excess of the 100,000 included monthly messages, Air2Web will charge Company \$0.035 per Mobile Terminate (MT) and \$0.015 Mobile Originate (MO) message delivered. The first monthly invoice will be issued on May 1, 2007.
- D. **WALLPAPER CAMPAIGN FEE:** If Company elects this Wallpaper Campaign Service, then the fee shall be \$1,000 per wallpaper campaign (each campaign shall be limited to one (1) wallpaper image and three (3) months in duration) payable after each month in which a wallpaper campaign is executed. Hosting of all wallpaper images shall include the creation and execution of up to three (3) campaigns per season. SMS messages shall be with embedded URLs to wallpaper images. Company will upload wallpaper images into Air2Web's mobility engine according to size and other requirements as specified by Air2Web from time to time. Company will be issued an invoice at the start of each month in which Customer elects to choose the Wallpaper Campaign Service.
- E. **DUE AT INCEPTION:** Upon execution of this Agreement and subject to an invoice, Company shall pay the following to Air2Web: (1) \$6,000 (representing 3 months' shortcode fees for two vanity shortcodes) due within thirty (30) days of receipt of invoice.
- F. **PROFESSIONAL SERVICES FEE:** Except as set forth in a Statement of Work, professional services for custom development will be billed at the hourly rate of \$225.00 U.S.D. In any event, any additional fees not stated in this Schedule D, including but not limited to professional service fees, shall be subject to Company's prior approval.

SCHEDULE E**CARRIER MANDATED CONTENT STANDARDS**

The Carriers prohibit the delivery of Content over their systems of the type listed below, and reserve the right to amend their list of prohibited Content at any time. Accordingly, Company may not submit Content to the Air2Web Gateway Platform of the type listed below. The list does not apply to Subscriber originated messages. Air2Web reserves the right, in its sole discretion, to modify the list upon written notice to Company, including as required by any Carrier.

- Unlawful, obscene, profane, threatening, libelous, slanderous, defamatory or otherwise objectionable.
- Facilitates an illegal activity.
- Sexually explicit content or language.
- False, misleading or likely to mislead or deceive (including, without limitation, information relating to the source or the author of the message).
- Violates any intellectual property rights or any other rights of any person or entity.
- Invades any person's privacy.
- Unlawfully promotes or incites hatred (including, without limitation, any transmissions constituting or encouraging conduct that would constitute a criminal offense, give rise to civil liability, or otherwise violate any applicable law).
- Contains any spamming or flooding element or any advertising, marketing or promotional materials or information, solicitations, chain letters, pyramid schemes, investment opportunities or schemes or other unsolicited messages, contents or information except with the prior consent of Air2Web, Carrier(s) and the Subscribers.
- Alcoholic beverage-related (beer, wine, liquor, etc.).
- Tobacco-related (cigarettes, cigars, pipes, chewing tobacco, etc.).
- Guns/weapons-related (firearms, bullets, etc.).
- Illegal drugs-related (marijuana, cocaine, etc.).
- Pornographic-related (adult themes, sexual content, etc.).
- Crime-related (organized crime, notorious characters, etc.).
- Violence-related (certain games, etc.).
- Death-related (funeral homes, mortuaries, etc.).
- Gambling-related (casinos, lotteries, etc.).
- Carrier competitor-related (e.g., providers of telecommunication services, providers of comparison shopping for telecommunications services, etc.).
- Involves a copy or parody of current or past Carrier products or services.
- Involves an implied affiliation, association or endorsement by, or favored status with, any Carrier.

SCHEDULE F**LIST OF CURRENT CARRIERS**

Set forth below are the Carriers as of the Effective Date. There can be no assurances that (i) the Company's service will be accepted by one or all of the foregoing Carriers, or (ii) that all or any of the Carrier's will maintain connectivity with Air2Web.

Carrier	Non-Premium service	Premium service
Alltel	Yes	Yes
AT&T	Yes	Yes
Dobson Cellular	Yes	Yes
Sprint Nextel	Yes	Yes
SunCom	Yes	Yes
T-Mobile	Yes	Yes
US Cellular	Yes	Not currently available
Verizon Wireless	Yes	Yes

Air2Web shall ensure that Company receives standard reporting per month as is made available from each Carrier at no additional charge. Company understands that carrier standards differ and not all carriers make available similar data, and each may change their reporting policies without notice. Air2Web will make commercially reasonable attempts to gather, document, and report all available data to Company. A failure of Air2Web to attempt to deliver at least 80% of the Campaign messages to Carriers in any calendar month will be cause for Company to terminate this Agreement without incurring additional fees, obligation, or liability. Company shall also be entitled to a pro rata refund of applicable pre-paid amounts (excluding short code fees). The foregoing shall be Company's sole and exclusive remedy for Air2Web's failure to meet this delivery commitment.

SCHEDULE G**SERVICE LEVEL STANDARDS FOR DELIVERY SERVICES**

Set forth herein are the terms and conditions by which Air2Web will deliver and Company will receive maintenance and support of the Air2Web Gateway Platform necessary for the continuous functioning and performance of the Delivery Services, and the Hosting Services for the continuous functioning and delivery of the Application.

1. *Uptime Monitoring and Reporting.* Air2Web will ensure that the performance and availability of the Services are monitored on a continuous basis. Air2Web employs commercially available fault monitoring systems to identify and act on failures realized in the Services. Air2Web will provide written root cause analysis for any Severity Level one outage.
2. *Uptime Commitment.* Air2Web guarantees the Services will be operating properly and available to Company and Subscribers at least ninety-eight percent (98%) of the time during each month, excluding Excusable Downtime ("Uptime Commitment"). If the Service Level guarantee is not met, then the Company may, as its sole and exclusive remedy, do any one (1) of the following: (a) request a credit equal to the Credit Percentage (as defined below) multiplied by the applicable month's SMS Message Fee and Campaign Management Hosting Fee (as set forth in Section C to Schedule D to this Agreement) to be applied against the next following month's invoice, or (b) if Air2Web fails to meet its Uptime Commitment in any three (3) consecutive months or if, during any single calendar month, the Services are not operating properly and available to Company and Subscribers at least seventy-five percent (75%) of the time during such month (excluding Excusable Downtime), terminate this Agreement upon written notice to Air2Web without incurring any liability, obligation, or penalty other than payment for those undisputed services previously rendered. "Excusable Downtime" includes the following: (i) scheduled downtime and maintenance set forth herein; (ii) the acts or omissions of Company or its customers, users, employees, agents, or contractors, or anyone gaining access to the Services by means of Company's passwords or equipment (except where such access was the result of an act or omission of Air2Web); (iii) suspension of Company's use of the Services as permitted in the Agreement; or (iv) a simultaneous failure of the primary and backup network connections between the Services and the Company System. If no backup network connections are in place at the time of the failure, the outage is not considered Excusable Downtime. "Credit Percentage" means the sum of ten percent (10%) plus one percent (1%) for each one percent (1%) of time below the ninety-eight percent (98%) Uptime Commitment above that the Services are not operating properly and available to Company and Subscribers during the applicable month (excluding Excusable Downtime); provided that the total Credit Percentage shall in no event exceed thirty-three percent (33%) (for illustration purposes only, if the Services are operating properly and available to Company eighty-five percent (85%) of the time during a particular month (excluding Excusable Downtime), then the applicable Credit Percentage shall be twenty-three percent (23%) (the 23% from the example was calculated as follows: $10\% + (98\% - 85\%) = 23\%$)).
3. *Scheduled downtime and maintenance.* Scheduled downtime and maintenance is governed and dictated by the Carrier. As required by the Carriers, Air2Web reserves periods every week during which maintenance and service upgrades will be made to its data center and network environments. Air2Web represents that the Carriers currently require the following times be reserved for maintenance:
 - a. Standard System Maintenance: Tuesday and Thursday 0100-0300 EST (EDT)
 - b. Enhanced System Maintenance: Sunday 0100-0500 EST (EDT)

Air2Web shall work with the Carriers and shall use its best efforts to minimize the downtime, taking into consideration any special events that may involve an increase in Company's message transactions, including but not limited to sports games or concert events that may result in Subscribers desiring more Content during times which are scheduled for downtime.
5. *Security.* Air2Web shall take commercially reasonable precautions to prevent unauthorized entry into computer and data systems comprising the Services and unauthorized access to the Company System. Air2Web shall notify Company of any such security breaches within two (2) hours of the time that Air2Web learns of their occurrence.
6. *Systems Monitoring & Escalation.* Air2Web shall use commercially reasonable efforts to provide systems monitoring and support described herein to Company in connection with the Services. The Air2Web Network Operations Center (NOC) is monitored 24 hours a day, seven days a week, during which it can be contacted for Service outages. The Air2Web NOC will only respond to messages from Company's technical personnel in Company's NOC.

- a. Company's requests will be prioritized as follows: Air2Web will investigate, determine the severity level of each reported error and respond to requests within the time frames indicated. Each such reported error will be classified as either a problem with the Services (a "Solution Error") or an external problem and, if a Solution Error, will be assigned a severity level according to the descriptions set forth below. After research by Air2Web, Air2Web may reclassify the error from one severity level to another after consultation with and approval by the Company. When a severity level is assigned, Air2Web will promptly designate appropriate management and engineering support personnel to investigate and take corrective action with respect to any error. Corrective action may initially include a temporary fix or work-around solution.
- b. Solution Errors are separated into several severity levels depending upon the availability of the Services. The severity levels are as follows:
 - i. Severity Level 1 is a Solution Error that makes the general use of the Services impossible and that cannot be circumvented or avoided on a temporary basis. The condition requires an immediate solution that is not already available. Air2Web will initiate an effort to replicate and verify the reported Solution Error within one (1) hour of receiving the problem report, provide continuous effort to arrive at a fix or work-around, and will use commercially reasonable efforts to provide Company with a fix or work around within twenty-four (24) hours of receiving the problem report. Company shall be updated on the current status of Severity level 1 problems by telephone or email every two (2) hours during normal business hours.
 - ii. Severity Level 2 is a Solution Error that makes the general use of the Services difficult and that can be circumvented or avoided on a temporary basis. Air2Web will initiate an effort to replicate and verify the reported Solution Error within two (2) hours of receiving the problem report, and will provide Company with a fix or work-around within three (3) business days of receipt of the problem report.
 - iii. Severity Level 3 is all other reported Solution Errors that are not covered in Severity Levels 1 or 2. Air2Web will begin work on such problem identification and verification within two (2) business days of receipt of the report of the problem, and will provide Company with a proposed fix or work-around within 7 business days.
5. **Company Responsibilities.** Company is responsible for all initial frontline support to Subscribers relating to the use and functionality of the Content. In order for Air2Web to resolve any problem within the targeted resolution period, Company must use commercially reasonable efforts to make its appropriate technical personnel available to Air2Web in order to assist as needed with such resolution. All problem reports shall be in English unless otherwise agreed to in writing by the Parties. Company will supply its scheduled maintenance periods and escalation contacts upon execution of this agreement.
6. **Standard Support.** Air2Web shall provide standard technical support, including phone, email, and web support for Level 1, 2, and 3 issues as defined in Section 6 herein, from 8:00am to 12am (EST) at no additional charge.

Air2Web Escalation Contact List

Timetable	Contact Name/Title	Business Hours Contact	After Hours Contact
Within 1 hour of reporting the incident.	Network Operations Center	noc@air2web.com Ph: 404-942-5404	noc@air2web.com Ph: 404-942-5404
1 hour after 1st level if no satisfaction from 1st level	Kirk VanDyke Manager Network Operations	Kirk.VanDyke@air2web.com Ph: 404-942-5329	noc@air2web.com Ph: 770-331-4590

Company Escalation Contact List

Timetable	Contact Name/Title	Business	After Hours Contact
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		Hours Contact	
Within 1 hour of reporting the incident.	Company		
1 hour after 1st level if no satisfaction from 1st level	Company		

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**AMENDMENT NO. 1
TO AIR2WEB APPLICATION AND SERVICES AGREEMENT**

This AMENDMENT NO. 1 ("Amendment No. 1") is made and entered into effective as of March 1, 2009 ("Amendment No. 1 Effective Date") by and between Air2Web, Inc. ("Air2Web") and Bebe Stores Inc. ("Company").

WHEREAS, Air2Web and Company entered into that certain Air2Web Application and Services Agreement with an Effective Date of April 2, 2007 (the "Agreement"); and

WHEREAS, Air2Web and Company hereby desire to amend their business relationship as set forth herein.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. The preamble and recitals above are incorporated herein by this reference. Any terms not defined herein shall have the meanings set forth in the Agreement.

2. The following is hereby added immediately before the section titled "Definitions" in the General Terms and Conditions of the Agreement:

"Territory. The Parties acknowledge and agree that this non-exclusive Agreement provides the terms and conditions pursuant to which Company may deliver Content via the Air2Web Gateway Platform to Subscribers of Carriers in the United States and in Canada, as the case may be, which Subscribers are also located in the United States or Canada, as the case may be. Any Content that Company intends to deliver via the Air2Web Gateway Platform to Subscribers of Carriers that service other geographic areas (and/or to Subscribers located in other geographic areas) shall be set forth in a mutually executed Addendum to this Agreement, which Addendum shall specifically reference this Agreement."

3. The term "Carriers" in the section titled "Definitions" in the General Terms and Conditions of the Agreement is hereby deleted in its entirety and replaced with the following:

"Carriers. Providers of wireless messaging services to Subscribers via wireless telecommunications networks with whom Air2Web maintains connectivity (including via Third Party service entities that provide network connectivity services for message delivery to and from Carriers ("Third Party Aggregators")) from time to time. For purposes of this Agreement, the term "Carriers" shall include applicable Third Party Aggregators. As of the Effective Date, the Carriers within the United States include those listed in Schedule F and Carriers within Canada include: Bell Mobility, Microcell, MTS, Rogers, Sasktel, Telus and Virgin Mobile. There can be no assurances that (a) the Services will be accepted by any or all of the Carriers, or (b) that all or any of the Carriers will maintain connectivity with Air2Web."

4. The following is hereby added to the end of the Section titled "Payment Policy" under the General Terms and Conditions of the Agreement:

"All amounts under this Agreement are stated and payable in United States Dollars. In addition to the fees otherwise set forth herein, Company shall be responsible for carrier rate increases arising after the Amendment No. 1 Effective Date (e.g., SMS message rate increases) and carrier-specific charges (e.g., program/campaign application fees), if any, which Air2Web will pass-through to Company at cost."

5. The current Renewal Term shall be extended through and including March 31, 2010.

6. Section 1(c) of Schedule C to the Agreement is hereby deleted in its entirety and replaced with the following:

"c) Content Format. All messages must contain only characters within the standard GSM character set unless Air2Web consents in writing to permit Company to send messages containing characters not within the standard GSM character set which messages: (a) must be sent solely to a properly provisioned code which shall be the sole responsibility of Company; and (b) will be treated as an international SMS message and be subject to international messaging rates. Further, Company shall provide Content to the Air2Web Gateway Platform in such format as Air2Web may reasonably require from time to time. Air2Web may amend the formats required for the Services by providing reasonable advance notice thereof. The Company shall provide at least thirty (30) days advance written notice to Air2Web for any change in the formatting of the Content."

7. The following are hereby added as new Sections 1(e) and 1(f) of Schedule C to the Agreement:

"e) SMS Message Charges. Company will be charged (or, as applicable, Company's SMS message allowance or SMS message pre-paid allotment will be debited) for all SMS messages as follows: (a) for each mobile terminate ("MT") SMS message, upon Air2Web sending the SMS message from the Air2Web Gateway Platform to the relevant Carrier for delivery; and (b) for each mobile originate ("MO") SMS message, upon Air2Web's receipt of the SMS message from the Carrier. For clarity, Company agrees that

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the foregoing shall apply irrespective of whether the SMS message is ultimately delivered to the Subscriber or otherwise.

f) **Delivery Service Calculations.** All charges or payments for the Delivery Services shall be calculated by reference to data recorded by (i) the relevant Carrier(s), in respect of Premium Content Services and "free to end user" programs, and (ii) Air2Web, in relation to other Delivery Services."

8. Section B of Schedule D to the Agreement applies solely to United States Short Codes.
9. Section C of Schedule D to the Agreement applies solely to United States Short Codes, United States SMS messages, and hosting of the Campaign Manager application for use in the United States.
10. Section E of Schedule D to the Agreement is hereby deleted in its entirety and replaced with the following:

"E. **CANADA-SPECIFIC FEES:**

(a) **INITIAL IMPLEMENTATION SERVICES:** \$2,500.00 to be invoiced upon the Amendment No. 1 Effective Date. This charge is inclusive of all set-up fees and includes three months of short code fees. Air2Web has the right to charge Company for implementation services for each additional campaign/program beyond Company's initial Canadian campaign/program.

(b) **MONTHLY DirectTEXT SUBSCRIPTION:** Company shall pay the applicable DirectTEXT subscription fee set forth below; Air2Web will invoice Company for such fees monthly in advance beginning upon the Amendment No. 1 Effective Date. The DirectTEXT subscription fee shall be: (i) \$450.00 for months one (1) through three (3) immediately following the Amendment No. 1 Effective Date; and (ii) \$750.00 for months four (4) through twelve (12) immediately following the Amendment No. 1 Effective Date. The foregoing fees described in clause (ii) above include the monthly fee for one (1) Canadian Random Short Code. Company acknowledges and agrees that it must maintain at least one (1) Canadian Short Code, separate and apart from any United States Short Code, for delivery of SMS messages into Canada.

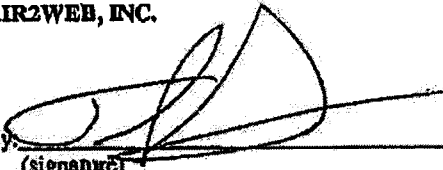
(c) **STANDARD SMS MESSAGING:** Air2Web will charge Company, on a monthly basis, for each non-premium (standard) Canadian SMS message sent according the following schedule:

Standard Canadian SMS Message Fee Schedule		
Range of Applicable SMS Message Type/Month	Fee Per Mobile Terminate (MT) SMS Message in Range	Fee Per Mobile Originate (MO) SMS Message in Range
1 - 150,000	\$0.070	\$0.015
150,001 and above	\$0.050	\$0.015


11. Except as otherwise expressly modified or amended herein, all terms and conditions contained in the Agreement shall remain in full force and effect and shall not be altered or changed by this Amendment No. 1. Furthermore, unless otherwise expressly stated herein, the terms set forth in this Amendment No. 1 shall control to the extent there is any conflicts or inconsistencies between such terms and the terms set forth in the Agreement. This Amendment No. 1 may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement.

IN WITNESS WHEREOF, the parties have caused their duly authorized representatives to execute this Amendment No. 1 as of the Amendment No. 1 Effective Date set forth above.

AIR2WEB, INC.

By: 
(signature)
Name: THOMAS MACLEOD JR
Title: President & CEO

Bebe STORES Inc.

By: 
(signature)
Name: Kate Bellmer
Title: Dir. Database Marketing

BEBE-AIR2WEB-001-1-0117

**AMENDMENT NO. 2
TO AIR2WEB APPLICATION AND SERVICES AGREEMENT**

This AMENDMENT NO. 2 ("Amendment No. 2") is made and entered into effective as of December 01, 2010 ("Amendment No. 2 Effective Date") by and between Air2Web, Inc. ("Air2Web") and bebe Stores Inc. ("Company").

WHEREAS, Air2Web and Company entered into that certain Air2Web Application and Services Agreement with an Effective Date of April 2, 2007, as amended by Amendment No. 1 dated April 1, 2009 (collectively, the "Agreement"); and

WHEREAS, Air2Web and Company hereby desire to amend the Agreement as set forth herein.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. The preamble and recitals above are incorporated herein by this reference. This Amendment No. 2 is made a part of, and shall be subject to the terms and conditions set forth in, the Agreement as further set forth herein. Any terms not defined herein shall have the meanings set forth in the Agreement.

2. The current Renewal Term shall be extended through and including January 31, 2012. All amounts under this Agreement are stated and payable in United States Dollars.

3. Section 1 of Schedule A to the Agreement is hereby deleted in its entirety and replaced with the following:

"1. Definition of Application. The Applications are computer software owned by Air2Web known as DirectTEXT™ and CampaignPRO. DirectTEXT includes the following features: (a) connections to U.S. Carriers to supply bi-directional SMS messaging; and (b) XML SOAP API for sending and receiving Content. CampaignPRO includes the following features: (a) connections to U.S. Carriers to supply bi-directional SMS messaging; (b) web-based software for text campaign creation, management and reporting; (c) WAP hosting for binary content and optimization; and (d) Company's access to mobile numbers acquired through Company's mobile marketing campaign."

4. Section B of Schedule D to the Agreement is hereby deleted in its entirety and replaced with the following:

"B. SHORT CODE FEES. Air2Web will maintain one (1) vanity short code on behalf of Company during the term. If requested by Company, Air2Web will acquire additional short code on behalf of Company and will invoice Company for same. The fees for short code are as follows: \$500.00 per random short code per month, and \$1,000.00 per vanity short code per month. All short code have a minimum commitment of three (3) months (both for initial acquisition and for each renewal and irrespective of whether this Agreement expires or terminated during any such period) and must be paid in advance. Company acknowledges that Air2Web will not acquire or renew any short code unless and until Company pays for same."

5. Section C of Schedule D to the Agreement is hereby deleted in its entirety and replaced with the following:

"C. MONTHLY DirectTEXT AND CampaignPRO SUBSCRIPTION FEES AND STANDARD SMS MESSAGING FEES. \$10,000.00 per month during the Term; provided, however, Air2Web will discount the foregoing fee amount to \$6,500.00 solely for the period from the Amendment No. 2 Effective Date through January 31, 2011. Air2Web will invoice Company for such fees monthly in advance beginning upon the Amendment No. 2 Effective Date. The foregoing subscription fees include up to 350,000 non-premium (standard) domestic SMS messages (each a "Standard SMS message") per month (the "Monthly Messaging Allowance"). Any unused Standard SMS messages within the Monthly Messaging Allowance shall roll over to the subsequent month and be an addition to such month's Monthly Messaging Allowance; provided, however, if there are any unused Standard SMS messages within the Monthly Messaging Allowance (including all prior eligible roll over amounts) as of January 31 of any year other than 2011 (such amount of unused Standard SMS messages as of January 31 of such year the "Standard SMS Message Balance"), then (i) only an amount of Standard SMS messages equal to the Annual Roll Over Amount shall roll over to February of such year and be

[SIGNATURE PAGE TO AMENDMENT NO. 2]

IN WITNESS WHEREOF, the parties have caused their duly authorized representatives to execute this Amendment No. 2 as of the Amendment No. 2 Effective Date set forth above.

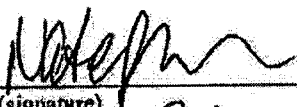
AIR2WEB, INC.

Bebe STORES, INC.

By: _____
(signature)

Name: _____

Title: _____

By:  _____
(signature)

Name: NATE BENMUEL

Title: DIR. DATABASE MARKETING

**AMENDMENT NO. 3
TO AIR2WEB APPLICATION AND SERVICES AGREEMENT**

This AMENDMENT NO. 3 ("Amendment No. 3") is made and entered into effective as of September 13, 2013 ("Amendment No. 3 Effective Date") by and between Air2Web, Inc. ("Air2Web") and bebe Stores Inc. ("Company").

WHEREAS, Air2Web and Company entered into that certain Air2Web Application and Services Agreement with an Effective Date of April 2, 2007, as amended by Amendment No. 1 dated April 1, 2009 and by Amendment No. 2 dated December 1, 2010 (collectively, the "Agreement"); and

WHEREAS, Air2Web and Company hereby desire to amend the Agreement as set forth herein.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. The preamble and recitals above are incorporated herein by this reference. This Amendment No. 3 is made a part of, and shall be subject to the terms and conditions set forth in, the Agreement as further set forth herein. Any terms not defined herein shall have the meanings set forth in the Agreement.

2. The current Renewal Term shall be extended through and include July 31, 2014. Notwithstanding anything contrary in Amendment No. 3 or the Agreement, the Renewal Term shall automatically terminate on August 1, 2014 unless extended by mutual written agreement.

3. Section 1 of Schedule A to the Agreement is hereby deleted in its entirety and replaced with the following:

"1. Definition of Application. The "Application" is a server-based, messaging-related software application owned by Air2Web (and/or its affiliates) known as Communicate Pro™."

4. Effective as of August 1, 2013, Schedule D to the Agreement is hereby deleted in its entirety and replaced with Schedule D attached hereto and incorporated herein by this reference.

5. Except as otherwise expressly modified or amended herein, all terms and conditions contained in the Agreement are hereby ratified and reaffirmed and shall remain in full force and effect and shall not be altered or changed by this Amendment No. 3. Furthermore, unless otherwise expressly stated herein, the terms set forth in this Amendment No. 3 shall control to the extent there is any conflicts or inconsistencies between such terms and the terms set forth in the Agreement. This Amendment No. 3 may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement.

[SIGNATURES COMMENCE ON FOLLOWING PAGE]

[SIGNATURE PAGE TO AMENDMENT NO. 3]

IN WITNESS WHEREOF, the parties have caused their duly authorized representatives to execute this Amendment No. 3 as of the Amendment No. 3 Effective Date set forth above.

AIR2WEB, INC.

bebe STORES, INC.

By: 

(signature)

Name: Harvey Schall

Title: CTO

By: 

(signature)

Name: FEI YE

Title: Director, CRM

[Schedule D commences on following page]

SCHEDULE DAIR2WEB FEES1. **Communicate Pro™ Subscription and United States SMS Messaging Fees.****Table 1**

Communicate Pro Fee Schedule		
Monthly Subscription Fee	Number of Standard SMS Messages in Monthly Messaging Allowance	Overage Rate per Standard SMS Message
\$5,000.00	700,000	\$0.01

Notes for Table 1:

1. **Monthly Subscription Fees.** Company shall pay the "Monthly Subscription Fee" as set forth in Table 1 above throughout the Term. Air2Web will invoice Company for the applicable Monthly Subscription Fees monthly in advance commencing upon the Amendment No. 3 Effective Date.
2. **SMS Messages.**
 - (a) **Included SMS Messages.** The Monthly Subscription Fee includes the respective amount of non-premium (standard) domestic SMS messages (each a "Standard SMS Message") per calendar month (the "Monthly Messaging Allowance") as set forth in Table 1 above; provided that any unused Standard SMS Messages within the Monthly Messaging Allowance shall expire at the end of the applicable month and not roll over to the subsequent month.
 - (b) **Message Overages.** Air2Web will charge Company, on a monthly basis, for each Standard SMS Message sent or received beyond the applicable Monthly Messaging Allowance (i.e., each Standard SMS Message after full decrement of the applicable Monthly Messaging Allowance) at the applicable Overage Rate per Standard SMS Message as set forth in Table 1 above.
 - (c) **Certain Additional Fees.** Air2Web will charge Company, on a monthly basis, (i) an additional \$0.005 for each mobile terminated ("MT") Standard SMS Message and for each mobile originated ("MO") Standard SMS Message related to Sprint and/or its affiliates, (ii) an additional \$0.0025 for each MT Standard SMS Message and for each MO Standard SMS Message related to T-Mobile and/or its affiliates, (iii) an additional \$0.0075 for each MT Standard SMS Message and for each MO Standard SMS Message related to MetroPCS and/or its affiliates, (iv) an additional \$0.0025 for each MT Standard SMS Message related to Cricket and/or its affiliates, and (v) an additional \$0.0035 for each MT Standard SMS Message related to US Cellular and/or its affiliates, and (vi) an additional \$0.0015 for each MT Standard SMS Message for CNS services. The foregoing fees shall apply to all Standard SMS Messages related to Sprint, T-Mobile, MetroPCS, Cricket, US Cellular and/or their affiliates (and to all Standard SMS Messages for CNS services) including without limitation Standard SMS Messages within any Monthly Messaging Allowance. For clarity, the foregoing fees are in addition to any other fees set forth in this Agreement.

[Schedule D continues on following page]

2. United States Short Code Fees.

Table 2

United States Short Code Lease Fees	
Short Code Type	Price Per Month
Random	\$500.00
Vanity	\$1,000.00

Notes for Table 2:

1. **Lease.** Company will continue to lease the short codes applicable as of the Amendment No. 3 Effective Date and Air2Web will continue to invoice Company for same. If requested by Company, Air2Web will acquire additional short codes on behalf of Company and will invoice Company for same. The fees for all short codes are set forth in Table 2 above.
2. **Lease Terms.** All short codes leases have a minimum commitment of three (3) months (both for initial acquisition and for each renewal and irrespective of whether this Agreement expires or terminates during any such period) (each such three (3) month period a "Lease Term") and must be paid quarterly in advance. The Lease Terms for all short codes shall automatically renew for successive additional three (3) month lease terms (also a "Lease Term") upon expiration of each Lease Term unless either Party hereto provides notice to the other Party of its intent not to renew such Lease Term at least thirty (30) days in advance of the scheduled expiration of the Lease Term, but in no event shall Velti renew the Lease Term after July 31, 2014 unless by mutual written agreement. Company acknowledges that Air2Web, at its sole option, will not acquire or renew any short code unless and until Company pays for same. Short code lease fees do not include CAF (as defined below) filing service fees.

3. Set-up Fees for United States Short Codes.

Table 3

Short Code Set-up Fees	
Tier 1, 2 and 3 Covered Carriers (simultaneously)	\$2,500.00 per CAF filing

Table 4

Certain Additional Carrier Fees	
T-Mobile and its affiliates	\$500.00 per submitted program
Sprint and its affiliates	\$150.00 per provisioned short code
Virgin Mobile and its affiliates	\$200.00 per submitted program

Notes for Tables 3 and 4:

1. **Payment.** Air2Web will invoice Company for the set-up fees for Carrier Application Form ("CAF") filings in advance upon purchase at the rates set forth in Table 3 above.
2. **Included and Excluded Items.** The fees set forth in Table 3: (a) relate solely to work performed by Air2Web personnel (i.e., Air2Web Professional Services) in connection with Air2Web's standard United States CAF filing services, and (b) DO NOT INCLUDE THE CARRIER-SPECIFIC FEES SET FORTH IN TABLE 4 ABOVE OR ANY OTHER AND/OR ADDITIONAL CARRIER-SPECIFIC FEES ARISING AFTER THE EFFECTIVE DATE, ALL OF WHICH (I) AIR2WEB WILL PASS THROUGH TO COMPANY AT COST, (II) ARE SUBJECT TO CHANGE FROM TIME TO TIME INCLUDING WITHOUT ADVANCED NOTICE, AND (III) AIR2WEB WILL INVOICE COMPANY FOR IN ADVANCE UPON PURCHASE.

[Schedule D continues on following page]

4. **Canada-Specific Fees.**

(a) **Implementation Services.** Air2Web has the right to charge Company for implementation services for each additional campaign/program beyond Company's initial Canadian campaign/program.

(b) **Monthly Communicate Pro Subscription.** \$675.00 per month during the Term; Air2Web will invoice Company for such fees monthly in advance beginning upon the Amendment No. 3 Effective Date. The Canadian Communicate Pro subscription fee is in addition to the subscription fees set forth in Section 1 of this Schedule D and includes (i) the monthly lease fee for one (1) Canadian Random Short Code, and (ii) up to 1,000 non-premium (standard) Canadian SMS messages (each a "Canadian SMS message") per month (the "Monthly Canadian Messaging Allowance"); any unused Canadian SMS messages within the Monthly Canadian Messaging Allowance shall roll over to the subsequent month and be an addition to such month's Monthly Canadian Messaging Allowance; provided, however, any unused Canadian SMS messages within the Monthly Canadian Messaging Allowance (including all roll over amounts) shall expire at the end of the then current Renewal Term and not roll over to the subsequent period. Air2Web shall have no obligation to refund any amounts related to unused Canadian SMS messages in any Monthly Canadian Messaging Allowance at the time of their expiration. Company acknowledges and agrees that it must maintain at least one (1) Canadian Short Code, separate and apart from any United States Short Code, for delivery of SMS messages into Canada.

(c) **STANDARD SMS MESSAGING:** Air2Web will charge Company, on a monthly basis, for each Canadian SMS message sent or received beyond the Monthly Canadian Messaging Allowance (i.e., each Canadian SMS message after full decrement of the applicable Monthly Canadian Messaging Allowance) as follows: (i) \$0.04 per mobile terminated Canadian SMS message, and (ii) \$0.005 per mobile originated Canadian SMS message.

5. **Professional Services.** Air2Web will bill Company for Professional Services (including custom development, campaign execution, application store submissions, short code provisioning and other professional services not stated herein) as provided (billable in quarter-hour increments at \$200.00 per hour. Air2Web to provide Professional Services only upon receiving the Company's prior written specific consent.

[End of Schedule D]

**AMENDMENT NO. 4
TO AIR2WEB APPLICATION AND SERVICES AGREEMENT**

This AMENDMENT NO. 4 ("Amendment No. 4") is made and entered into effective as of July 31, 2014 ("Amendment No. 4 Effective Date") by and between mGage, LLC via assignment from Air2Web, Inc. ("mGage") and bebe Stores Inc. ("Company").

WHEREAS, mGage and Company are parties to that certain mGage Application and Services Agreement with an Effective Date of April 2, 2007, as amended by Amendment No. 1 dated April 1, 2009, by Amendment No. 2 dated December 1, 2010 and by Amendment No. 3 dated September 13, 2013 (collectively, the "Agreement"); and

WHEREAS, mGage and Company hereby desire to amend the Agreement as set forth herein.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. The preamble and recitals above are incorporated herein by this reference. This Amendment No. 4 is made a part of, and shall be subject to the terms and conditions set forth in, the Agreement as further set forth herein. Any terms not defined herein shall have the meanings set forth in the Agreement.

2. The current Renewal Term is hereby extended through and include January 31, 2015. Notwithstanding anything contrary in Amendment No. 4 or the Agreement, the Renewal Term shall automatically terminate on February 1, 2015 unless extended by mutual written agreement.

3. All references to "Air2Web, Inc." and "Air2Web" in the Agreement are hereby replaced with "mGage, LLC" and "mGage", respectively.

4. The address for all notices to mGage is hereby revised to be: mGage, LLC, Attention: Legal Department, 3424 Peachtree Road, N.E., Suite 400, Atlanta, Georgia 30326.

5. Except as otherwise expressly modified or amended herein, all terms and conditions contained in the Agreement are hereby ratified and reaffirmed and shall remain in full force and effect and shall not be altered or changed by this Amendment No. 4. Furthermore, unless otherwise expressly stated herein, the terms set forth in this Amendment No. 4 shall control to the extent there are any conflicts or inconsistencies between such terms and the terms set forth in the Agreement. This Amendment No. 4 may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement.

IN WITNESS WHEREOF, the parties have caused their duly authorized representatives to execute this Amendment No. 4 as of the Amendment No. 4 Effective Date set forth above.

mGage, LLC

bebe STORES, INC.

By: 

(signature)

Name: Harvey Schall

Title: COO

By: 

(signature)

Name: Erik Lauter

Title: VP + COO

[End of Amendment No. 4]

1
mGage, LLC - Confidential Information

CONFIDENTIAL

bebe000078

EXHIBIT I

**bebe
2b**

DATE: March 9, 2012
TO: All Stores
FROM: Store Communications
CC: Field Managers and Store Operations
RE: Cell Phone Capture/Text Program Offer – Effective Immediately

OVERVIEW	<p>Starting today, entice more Clients to join our Cell Phone Capture/Text Program with an offer to sweeten the deal. Not only will they be the first to know about our exciting events and promotions by receiving exclusive text messages, but they'll also receive a 10% discount just for joining!</p> <ul style="list-style-type: none"> ■ The offer is valid for 10% off their next in-store purchase of regular price merchandise ■ The offer cannot be redeemed on bebe.com or 2bstores.com ■ The offer is valid for one time use only ■ The offer expires within 30 days (expiration date is included in the discount text message the Client receives) 												
HOW IT WORKS	<ul style="list-style-type: none"> <input type="checkbox"/> Introduce Clients to the Text Program benefits and the exciting discount that they'll receive if they add or update their cell phone number. <input type="checkbox"/> Associates must ensure that they capture the Client's accurate cell phone number by repeating it to the Client prior to completing the transaction. <input type="checkbox"/> Explain to the Client that in order to receive the discount code, they must respond to the initial text to opt-in to the program. <input type="checkbox"/> Once the Client's cell phone number is captured, they will receive an initial opt-in text message: <table border="1" data-bbox="464 1125 1468 1329"> <tr> <td>bebe</td><td>Style on the go! Reply "YES" to join bebe text program. Get 10% OFF a reg-price in-store purch (restrictions apply) + about 3-4 messages per mo w/latest offers.</td></tr> <tr> <td>bebe CANADA</td><td>Reply "STYLE" to join bebe text program! Get 10% OFF a reg-price in-store purch (restrictions apply) + 3-4 messages per mo.</td></tr> <tr> <td>2b</td><td>2b texted! Reply "2bME" to join 2b text program. Get 10% OFF a reg-price in-store purch (restrictions apply) + about 3-4 texts per mo w/latest offers & more.</td></tr> </table> <input type="checkbox"/> The Client must text the appropriate response to receive the discount text message: <table border="1" data-bbox="464 1409 1468 1640"> <tr> <td>bebe</td><td>bebe: Welcome! Abt 3-4 msg/mo. 10%OFF reg-price in-store pur thru Apr 8, 2012. DC:BH. Restrictions app. Txt STOP 2 quit, HELP 4 info. Msg&data rates may app.</td></tr> <tr> <td>bebe CANADA</td><td>bebe: Welcome! 3-4 msg/mo. 10%OFF rg-prc in-str thru Apr 8, 2012. DC:BH.Rstrctns app. Txt STOP 2optout, HELP 4info. Stndrd msg rates app.</td></tr> <tr> <td>2b</td><td>2b: Welcome! Abt 3-4 msg/mo. 10%OFF reg-price in-store pur thru Apr 8, 2012. DC:BH. Restrictions app. Txt 2bMESTOP 2 quit, HELP 4 info. Msg&data rates may app.</td></tr> </table> <input type="checkbox"/> Discount Code: B12BH (10% Off Text Sign Up) will remain active in the POS on an ongoing basis until further notice, however the client's text message will feature an expiration date 30 days after the day that they opt-in. Please double check the expiration date has not passed prior to applying the discount. Managers should use their best judgment if a potential Client Service Issue arises regarding the offer expiration date. 	bebe	Style on the go! Reply "YES" to join bebe text program. Get 10% OFF a reg-price in-store purch (restrictions apply) + about 3-4 messages per mo w/latest offers.	bebe CANADA	Reply "STYLE" to join bebe text program! Get 10% OFF a reg-price in-store purch (restrictions apply) + 3-4 messages per mo.	2b	2b texted! Reply "2bME" to join 2b text program. Get 10% OFF a reg-price in-store purch (restrictions apply) + about 3-4 texts per mo w/latest offers & more.	bebe	bebe: Welcome! Abt 3-4 msg/mo. 10%OFF reg-price in-store pur thru Apr 8, 2012. DC:BH. Restrictions app. Txt STOP 2 quit, HELP 4 info. Msg&data rates may app.	bebe CANADA	bebe: Welcome! 3-4 msg/mo. 10%OFF rg-prc in-str thru Apr 8, 2012. DC:BH.Rstrctns app. Txt STOP 2optout, HELP 4info. Stndrd msg rates app.	2b	2b: Welcome! Abt 3-4 msg/mo. 10%OFF reg-price in-store pur thru Apr 8, 2012. DC:BH. Restrictions app. Txt 2bMESTOP 2 quit, HELP 4 info. Msg&data rates may app.
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QUESTIONS	Contact your District Manager												
MANAGER SIGN OFF	<table border="1"> <tr> <td>X</td> <td>X</td> <td>X</td> <td>X</td> </tr> </table>	X	X	X	X								
X	X	X	X										

FILE: COMMUNICATIONS BINDER, MEMOS TAB KEEP UNTIL FURTHER NOTICE

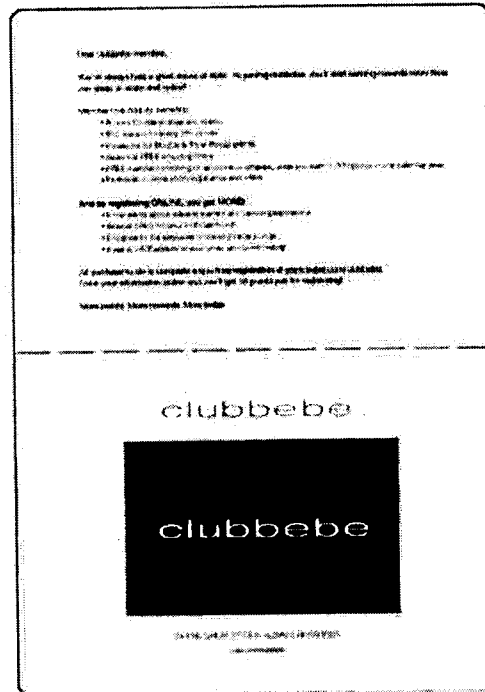
CONFIDENTIAL

bebe000032

CLUBBEBE INFORMATION GUIDE & POS PROCEDURES

WELCOME TO THE CLUB

clubbebe is our exclusive Loyalty program that not only recognizes our Clients and rewards them for shopping, but offers every member the inside scoop on new merchandise! clubbebe members will also be invited to special in-store events, shopping nights, and will have access to the clubbebe Lounge on bebe.com where they can obtain exclusive information and offers! Members will earn points when applying clubbebe to any purchase made in-store and on bebe.com. clubbebe is valid in stores located in the U.S., Puerto Rico and USVI only.



JOINING CLUBBEBE & BENEFITS

Clients can enroll at any store in the U.S., Puerto Rico and USVI and will receive a loyalty card immediately upon enrollment in the POS.

POINTS	BENEFITS
Enrollment	1 Point for every dollar spent 50 Points upon registration of a valid email address on bebe.com Invitations to special in-store events Exclusive online offers
250 Points	All of the above, plus: \$10 Reward Coupon for every 250 Points Double Points shopping events
1000 Points	All of the above, plus: Free standard shipping on every in-store and online purchase for one year

Inform your Client that if they activate their clubbebe account at bebe.com, they not only receive 50 points, but can also receive electronic statements, view point balance, history and rewards status.

CLUBBEBE IN/OUTS OF POINTS & REWARDS

CLUBBEBE POINTS

- clubbebe points are not available on previous purchases
- clubbebe points are earned on net dollars. Earning of points does not include tax, shipping, returns, Gift Cards or value of clubbebe rewards
- clubbebe points are non-transferable
- A photo ID is required for all in-store clubbebe purchases, when the clubbebe card is not present
- 50 points will be credited within 24 hours of activation of a clubbebe account online. This is a one-time credit. **(Note: Activation is different than signing up. Activation is how a clubbebe account is tied to online activity.)**
- clubbebe points may take up to 24 hours to be credited to a clubbebe account for in-store purchases
- clubbebe points will be credited to a clubbebe account within 24 hours, after the merchandise has shipped, for purchases made on bebe.com
- clubbebe accounts can be activated by logging onto bebe.com. A valid email address is required.
- clubbebe points can be checked by visiting any bebe or 2b bebe store in the U.S., Puerto Rico and USVI or by logging onto bebe.com.
- Only if the clubbebe account has been activated on bebe.com prior to purchase, then clubbebe points can be earned for purchases on bebe.com using the clubbebe membership number

CLUBBEBE REWARDS

- Clients will receive a \$10 reward for every 250 points earned
- Clients will receive an email each time a reward is earned
- clubbebe rewards are redeemable at all bebe and 2b bebe stores in the U.S., Puerto Rico and USVI and on bebe.com
- clubbebe rewards are valid for 60 days from issuance
- clubbebe rewards can be applied to purchases in any increment within the 60 day validation period. Any unused rewards will be banked and will be available for purchases within 60 days from reward issuance.
- clubbebe reward returns will be returned for actual amount paid, less any clubbebe rewards, on the returned merchandise
- An Expiring Rewards Report is available on storenet. This report will allow Stores to contact Clients that have clubbebe rewards that are expiring. Before notifying Client's of an expiring reward, it is recommended that Stores look up the Client's clubbebe number in the POS and confirm the reward is still valid.
- The value of the clubbebe rewards will be applied towards the pre-tax merchandise total, excluding Gift Card purchases, shipping and tax.
- clubbebe rewards are:
 - not valid towards previous purchases, price adjustments or combinable with any other offer
 - non-transferable
 - not redeemable for cash
 - not eligible for associate use

CLUBBEBE BIRTHDAY REWARDS

Clients who have registered their birthday and have accumulated at least 250 points will receive a special clubbebe Happy Birthday email valid for \$10 off one purchase of regular priced merchandise.

Coupon Disclaimers:

- Select Discount Code "clubbebe Birthday" at the Point of Sale
- Valid on full price merchandise only
- Not combinable with clubbebe Rewards
- Expires 6 weeks from beginning of Client's birth month (or the 15th of the next month)
- Client must have given us their birth date information at least 10 business days prior to the start of their birthday month to receive the discount email

CLUBBEBE CLIENTELING AT THE POS

JOINING THE CLUB...

To ensure consistency in how we communicate with our Clients, use the following script each time you process a sale/exchange transaction:

Stylist: Are you a clubbebe member?

If the Client is a member of clubbebe, scan her card or look her up. Verify her e-mail address and physical address in the system is correct.

Client: No, I am not. What is clubbebe?

Stylist: You should sign up today! It's a free rewards program that allows you to earn points toward coupons and give you access to exclusive offers. You get a point for every dollar you spend and earn a \$10 reward for every 250 points you accumulate. All I need is your e-mail address to get started.

Client: Why do you need my e-mail address?

Stylist: So that you can access our online clubbebe lounge which gives you the ability to access new product before it arrives in-store or on bebe.com. You'll also receive invitations to double point shopping events! And, bebe does not share email addresses with any other companies, so there's no need to worry.

If the Client continues to show resistance, continue the dialog with:

Stylist: Other amazing benefits include invitations to special shopping nights and special events.

If the Client continues to show resistance, finish the transaction with:

Stylist: Thank you for shopping with us today. Should you change your mind about joining clubbebe, you can join on your next visit to any bebe or 2b bebe store.

Review and role play the above with each associate. To ensure consistency, continue practicing until each associate can comfortably recite the dialogue. Listen to the first few transactions where the associate uses this approach and coach afterwards. Enrolling Clients in clubbebe is just another way we offer World Class Service.

ENROLLING A NEW CLIENT INTO CLUBBEBE AT THE POINT OF SALE

POS PROCEDURES

1. Search for the Client in the POS by entering any of the below criteria:
 - a. Phone Number only
 - b. Last and First Name. Note: If the Client has a common first and last name, search with additional information like Zip Code and/or State to narrow the search results.
2. Once you have entered in the search information select "Search"
3. At the Search Results Screen select "Add New"
4. A message prompt will appear asking if the Client would like to signup for clubbebe. Select "Yes" to enroll the Client into clubbebe.
5. Scan the new loyalty card at the clubbebe registration screen.
6. Enter the following information in the Address and Contact screen:
 - a. **Phone #**: Required for all clubbebe members. Must be entered in the (XXX) XXX-XXXX format
 - b. **Cell #**: Must be entered in the (XXX) XXX-XXXX format
 - c. **Email**: This is a great way to reach out to Clients! Let Her know that giving us Her email address, she will receive information about promotions, invitations to double point shopping events, exclusive access to new product launches before they arrive in-store or on bebe.com. Also, let Clients know that bebe does not share email addresses with any other companies.
 - d. **First Name**: Required for all clubbebe members
 - e. **Last Name**: Required for all clubbebe members
 - f. **Address (1st line)**: Required for clubbebe members. This field should contain the street address.
 - g. **Address (2nd line)**: This field should contain an apartment number if applicable.
 - h. **Zip Code**: Required for clubbebe members
 - i. **City**: Required for clubbebe members
 - j. **State**: Required for clubbebe members
 - k. **Birthday Month and Day**: Must be entered in numeric format. Example; Enter 10/28 for birthday October 28th. NOTE: The birth year will auto default to the current year.
7. Select "Save Changes" to continue
8. At this point, the Client's Address is validated through the POS system. Continue with the transaction as you normally would.

1-2. Client Lookup Screen

3. Search Results Screen

4. clubbebe Signup Prompt

5. clubbebe Registration Screen

6. Address and Contact Screen

9. Hand the Client her new clubbebe card presented in the card holder along with her receipt.
 Note: Inform the Client that the full T&Cs are available on bebe.com, but if she would like a copy you could provide one for her.

ENROLLING AN EXISTING CLIENT INTO CLUBBEBE AT THE POINT OF SALE

POS PROCEDURES

1. Search for the Client in the POS by entering any of the below criteria:
 - a. Phone Number only
 - b. Last and First Name. Note: If the Client has a common first and last name, search with additional information like Zip Code and/or State to narrow the search results.
2. Once you have entered in the search information select "Search"
3. If more than one Client appears, use the arrow keys to scroll up or down to highlight the Client
4. Choose "Select and View" to proceed
5. If the Client is not clubbebe, a pop up window will appear asking if the Client would like to signup for clubbebe. Select "Yes" to enroll the Client in clubbebe.
6. Scan the new loyalty card at the clubbebe registration screen.
7. Verify that the Client's contact information is up to date and correct in the Contact info screen. Note: Any missing required information needs to be entered by the cashier in order to continue.
8. Select "Assign Client To Transaction" to continue
9. At this point, the Client's Address is validated through the POS system. Continue with the transaction as you normally would.

2.

1-2. Client Lookup
Screen

3-4. Search Results
Screen

5. clubbebe Signup
Prompt

6. clubbebe
Registration Screen

7. Address and
Contact Screen

10. Hand the Client her new clubbebe card presented in the card holder along with her receipt.
Note: Inform the Client that the full T&Cs are available on bebe.com, but if she would like a copy you could provide one for her.

ENROLLING A CLIENT INTO CLUBBEBE USING NO CARD AVAILABLE

NO CARD AVAILABLE FUNCTION

Should your store run out of new clubbebe cards, you may use the "No Card Available" option from the clubbebe Registration Screen. The POS system will auto generate a clubbebe number for the Client so that points can still be earned at the time of purchase. The clubbebe loyalty # will print on the receipt header and footer. Inform the Client that they will not be issued or mailed a loyalty card and therefore will need to be searched in the POS using her/his phone number for future purchases.

POS PROCEDURES

- Search for the Client in the POS by entering any of the below criteria:
 - Phone Number only
 - Last and First Name. Note: If the Client has a common first and last name, search with additional information like Zip Code and/or State to narrow the search results.
- Once you have entered in the search information select "Search"
- At the Search Results Screen select "Add New". **Note:** if the Client is already in the system choose "Select And Continue"
- A message prompt will appear asking if the Client would like to signup for clubbebe. Select "Yes" to enroll the Client into clubbebe.
- From the clubbebe registration screen, select "No Card Available". **Note:** The "No Card Available" option will require a Manager's override when a non management Associate is logged in as the cashier.
- Enter the following information in the Address and Contact screen:
 - Phone #:** Required for all clubbebe members. Must be entered in the (XXX) XXX-XXXX format
 - Cell #:** Must be entered in the (XXX) XXX-XXXX format
 - Email:** This is a great way to reach out to Clients! Let Her know that giving us Her email address, she will receive information about promotions, invitations to double point shopping events, exclusive access to new product launches before they arrive in-store or on bebe.com. Also, let Clients know that bebe does not share email addresses with any other companies.
 - First Name:** Required for all clubbebe members
 - Last Name:** Required for all clubbebe members
 - Address (1st line):** Required for clubbebe members. This field should contain the street address.
 - Address (2nd line):** This field should contain an apartment number if applicable.
 - Zip Code:** Required for clubbebe members
 - City:** Required for clubbebe members
 - State:** Required for clubbebe members
 - Birthday Month and Day:** Must be entered in numeric format. Example; Enter 10/28 for birthday October 28th. NOTE: The birth year will auto default to the current year.
- Select "Save Changes" to continue. **Note:** if this is an existing Client choose "Assign Client To Transaction"
- At this point, the Client's Address is validated through the POS system. Continue with the transaction as you normally would.

1-2. Client Lookup Screen

3. Search Results Screen

4. clubbebe Signup Prompt

5. clubbebe Registration Screen

6. Address and Contact Screen

FAQs

Q: What if you issue a clubbebe card that is already assigned to a Client?

A: The POS will show the following error message: "The clubbebe card is invalid. Please scan a different clubbebe card."

Q: Do I still need to open a ticket with Store Support if a client has multiple clubbebe accounts that she/he would like to merge?

A: Yes.

Q: When does a clubbebe account become de-activated?

A: All clubbebe accounts without activity for more than one calendar year will become inactive and any point balance will reflect zero points.

Q: Where does a Client update their contact information?

A: Changes to clubbebe accounts are required to be updated both in-store and online.

Q: What happens if a Client's card is lost?

A: You may send the Client a replacement card by:

1. Assign the Client to the transaction
2. From the transaction screen, select the "Non Merch" function key.
3. From the Non Merch list select "Loyalty Replacement Card" and select "OK". **Note:** Corporate Office will mail the Client a replacement card.
4. Complete the transaction as you normally would

Q: Do existing clubbebe loyalty members need to re-enroll and be issued a new card?

A: No. Existing clubbebe members can continue to use their current clubbebe card and can be found in the POS by searching with their clubbebe number, phone number, and/or first and last name.

SUPPLY ORDERING

clubbebe supplies can be reordered on DDS. Below are the reorder numbers:

- clubbebe Card in holder
 - ☒ item #01262
 - ☒ 50 per package
- clubbebe T&Cs
 - ☒ item #01263
 - ☒ 100 per pad

EXHIBIT J

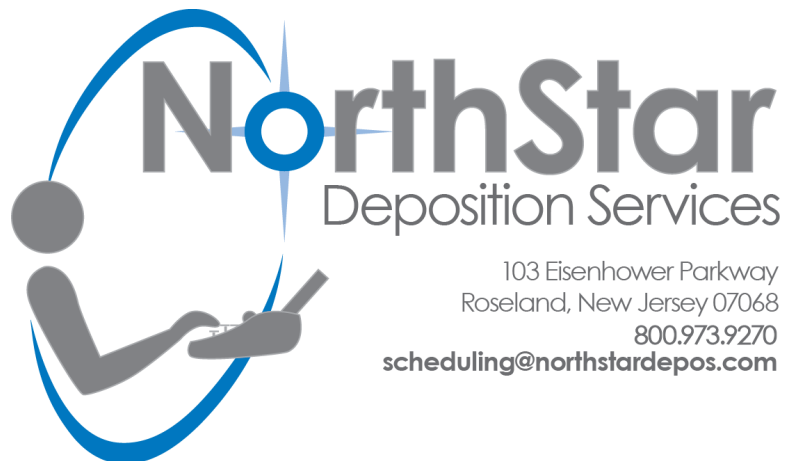
In The Matter Of:

Melita Meyer v.

Bebe Stores Inc.

Christaine Grando

January 07, 2016



Original File 010716Grando.txt

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1 there originally was an applet at the bottom of the
2 website. And that was just basically a little field
3 that would send the information directly to our vendor
4 when you signed up. Later that became a form field,
5 and that was also a sign up, and there was information
6 about, you know, "You are agreeing to sign up to
7 receive text messages from Bebe." And that would go
8 into our database and be attached to your account.
9 Q. Okay. So you're saying that there are
10 -- let's just focus on POS.
11 A. Oh, and you can also -- sorry. You
12 can also -- there was a code that you could text in
13 order to sign up.
14 Q. Okay.
15 A. Sorry. About that.
16 Q. It's okay. So let's focus on the POS
17 for a second. So you're saying that when somebody
18 approached or registered with --let's say a product to
19 buy, they could enroll -- or they could provide their
20 cell phone number without providing any additional
21 information?
22 A. They would have to at least give their
23 first name. That is my understanding. Angela would
24 be the better person to talk about clienteling, but
25 they are not forced to sign up for Club Bebe. They

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1 don't have to sign up for any other program. They had
2 the option of saying, "Yes, I would like to receive
3 text messages." They also had the option of saying,
4 "Yes, I'd like to receive e-mails, but I don't want to
5 receive text messages." There are all of those
6 difference options for figuring out how you'd like to
7 be communicated to.
8 Q. And is all the information that can be
9 collected at the point of sale, whether or not it
10 actually is, stored in one central database?
11 MS. PIERCE: If you know the answer to
12 that, you're welcome to testify to that. Sheela will
13 be able to -- sorry. I just want to remind you we do
14 have a person most knowledgeable who will be able to
15 tell you about the hardware and software that may give
16 you more complete answers.
17 MR. MENDELSON: Okay.
18 THE WITNESS: But my understanding,
19 yes. It all goes to Relate which is our CRM database.
20 BY MR. MENDELSON:
21 Q. Okay. So when somebody is -- chooses
22 to just provide their cell phone number, not any
23 additional information, not sign up for Club Bebe, are
24 they considered being signed up for -- is there a
25 name, a program that they're being signed up for?

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1 A. Just the text message program.
2 Q. Just the text message --
3 A. Just texting.
4 Q. And then if they provide the
5 additional information, they can be enrolled in Club
6 Bebe?
7 A. If they choose to, yes.
8 Q. And what information is required to be
9 enrolled into Club Bebe?
10 A. I am not sure actually.
11 Q. Okay.
12 A. They changed it a little while ago.
13 Q. Do you know on a percentage basis how
14 many -- with regard to all the cell phone numbers that
15 are contained in Bebe's database, what percentage were
16 also members of Club Bebe versus which -- what
17 percentage of people just provided only their cell
18 phone number?
19 A. I don't know.
20 Q. Is that information that can be
21 gleaned somewhere in your system?
22 A. You'll have to ask Sheela. As far as
23 I know, there is no -- we're not able to say that the
24 phone number that we're given is a cell phone or a
25 landline specifically. So you'll have to ask Sheela.

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1 Q. Can you explain what you mean by that?
2 A. That if we were to do a query and pull
3 out people with phone numbers who are in Club Bebe, it
4 could be that some of them are cell phone number and
5 some of them are landlines. There's no specific field
6 for cell phone. That's my understanding. So we'll
7 have to ask Sheela.
8 Q. Okay. And general information about
9 these databases where things are stored should be
10 directed to Sheela?
11 A. Yes.
12 Q. Not to you. I just want to make sure
13 that --
14 A. There's overlap. She's also the
15 director of CRM, but she's the director of CRM
16 operations. I'm the business side; she's the tech
17 side, but there's a lot of overlap.
18 Q. So I'm just going to -- you know,
19 everything kind of overlaps when I ask you questions,
20 and if, again, it's not something that you can speak
21 to, just let me know.
22 A. Okay.
23 Q. Now, I understand that at the POS,
24 Bebe uses MICROS Xstore; is that correct?
25 A. Yes.

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1 list compared to any of the other lists we would have,
2 like for e-mail or catalogue.
3 And, again, it's just part of our
4 omni-channel strategy. It's not what we're doing to
5 drive huge amounts of business or ROI. It's not
6 something where we're pounding people and saying,
7 "Give me your cell phone number because we have a text
8 messaging program." Over time, you understand what
9 works better in your channels, and even though it's
10 very difficult to understand how text messaging works
11 and whether or not there is an ROI, you can look at
12 the other channels that you can track and see which
13 are more productive. And since it was such a small
14 number of people that were enrolled in the text
15 message program, a lot of our emphasis has been placed
16 on programs that are more trackable, that we know
17 work, and that are easier to execute. And so that's
18 where we spent our time and effort.
19 When I came in, the text messaging
20 program was just sort of on autopilot. Every few
21 weeks we would have some content. It was given to one
22 of the girls who is -- was on my team for about three
23 months. When I got there, she had been there for a
24 little while. She would go in and set them up into
25 this interface that our vendor had, and then they

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1 would execute. That's the only time that we would
2 touch anything that had to do with any of the text
3 messaging program. Just going into this where we were
4 restricted. They have obviously security levels and
5 things that you can do in this interface.
6 A couple of times during the time that
7 I was there, even if I wanted to get to the
8 information about how many cell phone numbers we had,
9 I couldn't. I had to ask my account team at Air2Web.
10 I had absolutely no access to these phone numbers. I
11 had absolutely no access to those people. I didn't
12 interact with the people who were in the program.
13 Q. Okay. You started off your answer by
14 saying that Nate wasn't required to pull reporting or
15 reports from Air2Web, but do you know whether he
16 actually did?
17 A. I do not know whether he did. I do
18 know from some of the research that I did that Air2Web
19 did provide him reporting. And from what I
20 understand, and being a marketing person, I think that
21 reporting is just basically for understanding the
22 program.
23 Q. Okay. Another thing that you
24 mentioned in your answer was that, to use your words,
25 the text messaging list was "a very, very small list."

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1 A. Yes.
2 Q. Can you quantify that for me?
3 A. I don't know the exact number. The
4 number that I had seen in some of the documents was
5 well under a hundred thousand.
6 Q. And when you say "well under a hundred
7 thousand," is that the number you're referring to is
8 unique cell phone numbers?
9 A. I would assume they were unique.
10 MS. PIERCE: We don't want to assume.
11 Sorry.
12 THE WITNESS: I don't know.
13 BY MR. MENDELSON: I don't know.
14 Q. What I'm saying is you're referring to
15 cell phone numbers as opposed to, like, number of text
16 messages?
17 A. Cell phone numbers, yes. People on
18 the list. And if you compare that to catalogue or
19 e-mail, I mean, it's -- I don't know if I can say how
20 many people we have on our list, but...
21 Q. "Well under a hundred thousand." More
22 than 50,000?
23 A. I think it was a little bit more than
24 50,000.
25 Q. Now, you said you talked about the

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1 limited user interface that you had, but there is a
2 user interface that Air2Web allowed you to go and
3 basically insert the text -- the text of the text
4 message that would be sent; correct?
5 A. Correct.
6 Q. And it would also allow you to add
7 things like a start date and end date; correct?
8 A. I don't know because I never used it.
9 I've never seen it.
10 Q. Okay.
11 MS. PIERCE: Sorry. I'm thinking --
12 I'm not sure where you came up with the start and end
13 date.
14 MR. MENDELSON: Just based on my
15 understanding of how these types of scripts run. I
16 mean, they may -- I don't know.
17 MS. PIERCE: Sorry. I apologize. I
18 just want to make sure that I wasn't missing something
19 in...
20 MR. MENDELSON: There may not be in
21 this case. It may just be one -- one thing that goes
22 out. It depends on the way I think the script is
23 written, but...
24 BY MR. MENDELSON:
25 Q. So if -- if the information regarding

EXHIBIT K

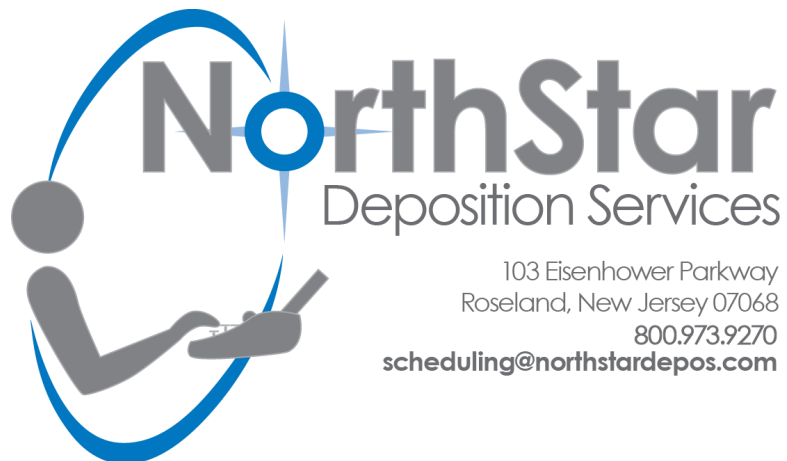
In The Matter Of:

Melita Meyer v.

Bebe Stores Inc.

Angela Kourtoglou

January 7, 2016



Original File 010716Kourtoglou.txt

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1 **A. Can you rephrase that?**

2 Q. Yeah. I just want to know -- you
3 mentioned the term clienteling and what that was
4 specifically. Well, strike that. Let me take a step
5 back.

6 Between January 2011 and January 2014,
7 when the cell phone capture campaign at the POS was
8 going on, would every customer who walked up to the
9 cash register be asked for their cell phone number?

10 **A. If the customer's making a purchase**
11 **and they -- when they pulled up the client's account,**
12 **if they didn't have a cell phone number in there, part**
13 **of the training was the stores would go through that**
14 **scripting with them of, "Oh, I notice you didn't have**
15 **your cell phone number. We now have a new text**
16 **program campaign. Would you like to join it? Here**
17 **are the features and benefits of it." And the client**
18 **would say no; or, again, they can say yes, and they**
19 **give the verbal consent to input that number.**
20 **Imputing that number, though, didn't mean that you**
21 **were automatically opted in because there was a double**
22 **opt-in process after that.**

23 Q. Okay. When you say "pull up the
24 client's account," how is that done?

25 **A. When a client comes into the store,**

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1 they'll say, "Oh" -- and if I don't know them by name;
2 and, again, because we are a strong client business,
3 most stores know their clients by name so they are
4 able to type in their first name, last name, city in
5 the system. But if you didn't, or even if you did,
6 you can say, you know, "What is your first name, last
7 name again? May I have your phone number, your
8 e-mail?" So there's a couple different vehicles in
9 which you can search for them. They would search for
10 that client. If it's a one-to-one match, one would
11 show up. If not, they would choose that client from a
12 list of similar names, confirm that information, and
13 then proceed with the sale from there.

14 Q. Okay. And prior to any sale or return
15 at a POS, is it ascertained by the Bebe employee
16 whether or not they are in Bebe's system?

17 **A. When a client comes up to the point of**
18 **sale, they will say, "Oh, are you a member of Club**
19 **Bebe? Have we clienteled you before?" And the client**
20 **would say, "yes." In many cases if the client is,**
21 **she'll actually present her Club Bebe card, and we'll**
22 **scan that to go through. So it's generally the first**
23 **question that's typically asked at the point of sale.**

24 Q. Do customers have to provide that
25 information in order to complete the sale or return?

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1 **A. Absolutely not.**

2 Q. And are customers told that? Is that
3 a disclosure that's made to all customers?

4 **A. Yes. If the client says, "No, I'm not**
5 **interested in joining the club" or not to be**
6 **clienteled, no problem. They continue on with the**
7 **sale.**

8 Q. And if it's determined that Bebe
9 doesn't have that customer's information in the
10 system, what happens next?

11 **A. Just any other sale like if you're**
12 **walking into a Gap store. We're going to ring you**
13 **through, we'll tender your payment options, and give**
14 **you the same expectation and level of client service**
15 **that we would if you weren't clienteled in our system.**

16 Q. But if somebody walks up to the POS,
17 and they ask whether you're a part of their system
18 and, you know, maybe they look up, and you're not in
19 there, what happens next? How is it that the
20 information is obtained from the customer?

21 **A. They would ask the customer, one, if**
22 **the customer said, "Yes, I would like to join Club**
23 **Bebe" and be clienteled, they would then input the**
24 **customer's first and last name, and then if you're**
25 **joining Club Bebe, it requires a phone number and full**

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1 **mailing address, and they'd repeat that back to the**
2 **client and save the information.**

3 Q. So when somebody is provided --
4 provides their information at the POS, in addition to
5 their phone number, their name is collected?

6 **A. First name and last name.**

7 Q. And their full address is collected?

8 **A. Mailing address, yes.**

9 Q. And how about a home phone number?

10 **A. It's a phone field, and that phone**
11 **field could be any phone number they provide you --**
12 **home, work, office, cell. It doesn't go anywhere**
13 **other than a saved database.**

14 Q. Okay. And that phone field, is there
15 a drop down or selection to select what type of phone
16 number's being provided?

17 **A. It's indicated as home only; so it**
18 **doesn't.**

19 Q. So if -- you mentioned some
20 disclosures that were given to customers regarding
21 joining Club Bebe and receiving text messages.
22 Wouldn't it be important to make sure that the phone
23 number that's being given is the cell phone number?

24 **A. There's a separate field called**
25 **"cell," and that's where they would input the cell**

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1 Q. Is there any age restrictions
2 regarding who was allowed to provide information to
3 Bebe?
4 **MS. PIERCE:** I'm going to object.
5 This question is outside the scope of this complaint.
6 **MR. MENDELSON:** Are you directing the
7 witness not to answer the question?
8 **MS. PIERCE:** Yes. I am going to
9 direct her not to answer it. It's outside the scope
10 of this kind of complaint. It's phishing
11 **MR. MENDELSON:** It's what?
12 **MS. PIERCE:** You're phishing on
13 something that is not relevant.
14 **MR. MENDELSON:** I disagree with your
15 characterization.
16 **MS. PIERCE:** If you think it's
17 relevant, please rephrase your question and ask it.
18 **BY MR. MENDELSON:**
19 Q. I want to know who is entitled to
20 provide information at the point of sale, including
21 cell phone numbers. So I asked -- just trying to get
22 specific. Is there -- are there age restrictions
23 regarding who was allowed to provide that information?
24 For instance, if somebody comes in there and they're
25 12 years old and they're buying something, are they

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1 permitted to enroll in Club Bebe?
2 **A. Honestly, I have to look the TNC's of**
3 **Club Bebe on an age restriction on there. If there is**
4 **one that exists, I have to go back and look at that.**
5 Q. Okay. This may be better directed at
6 one of the other witnesses, but do you know whether
7 Bebe can identify those customers that provided their
8 cell phone numbers at the point of sale as opposed to
9 some other method?
10 **A. It's not my area of knowledge.**
11 Q. Okay. Can information that is already
12 in Bebe's systems. Somebody had previously provided,
13 you know, their name, address, phone number, and cell
14 phone number, can that information be deleted from
15 Bebe's database from the point of sale? Do you know?
16 **A. It can.**
17 Q. So after a customer provides their
18 cell phone number at the point of sale and it's
19 entered into the system, they'll be sent an initial
20 text message by Bebe; correct?
21 **A. Correct.**
22 Q. When will that occur?
23 **A. Again, it's something that Christiane**
24 **or Sheela can probably speak more to because it did go**
25 **through third parties that deliver that message, but**

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1 **it was generally within -- if it was delivered, within**
2 **a few hours of the transaction.**
3 Q. And that would be that initial -- I
4 think what you referred to as a confirmatory opt-in
5 text message?
6 **A. Correct.**
7 Q. Was it sent to, or attempted to be
8 sent to, every person who provided their cell phone
9 number at the point of sale?
10 **A. To my understanding, yes. And, again,**
11 **it's something that Sheela and Christiane could speak**
12 **better to because they managed the vendors.**
13 Q. Do you have an understanding of what
14 the content of that first text message is?
15 **A. Yes.**
16 Q. Okay. Can you tell me what the
17 content is?
18 **A. Generally speaking it was "welcome" --**
19 **some sort of a welcome, and I don't know exactly what**
20 **the verbiage was. "Respond yes to receive your 10**
21 **percent discount on your next purchase by joining the**
22 **text program," and I had to say yes in order to be**
23 **opted in. If I did nothing, I'm good to go and I'm**
24 **never going to receive a text from Bebe.**
25 Q. So unless somebody replied yes to the

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1 initial text message that they receive, they will
2 never receive another text message from Bebe?
3 **A. To my knowledge, that is correct.**
4 Q. And despite, perhaps, minor changes to
5 the format of the message or the wording, were all of
6 those message -- initial text messages generally the
7 same during that cell phone capture period?
8 **A. I'd have to defer to Christiane on**
9 **that. I'm not CRM. They did the messaging.**
10 Q. You keep saying -- and I apologize.
11 What is CRM? What does CRM stand for?
12 **A. Customer relations management. It's**
13 **basically what the databases are referred to that**
14 **stores the client information.**
15 Q. Should I ask Christiane what happens
16 if the customer does reply yes?
17 **A. Yes.**
18 Q. Okay. Why don't we go off the record.
19 Just take a couple minute break.
20 **MS. PIERCE:** That'd be great.
21 **VIDEOGRAPHER:** Going off the record.
22 The time is 10:58 a.m.
23 (Off the record.)
24 **VIDEOGRAPHER:** We are back on the
25 record. The time is 11:19 a.m.

EXHIBIT L

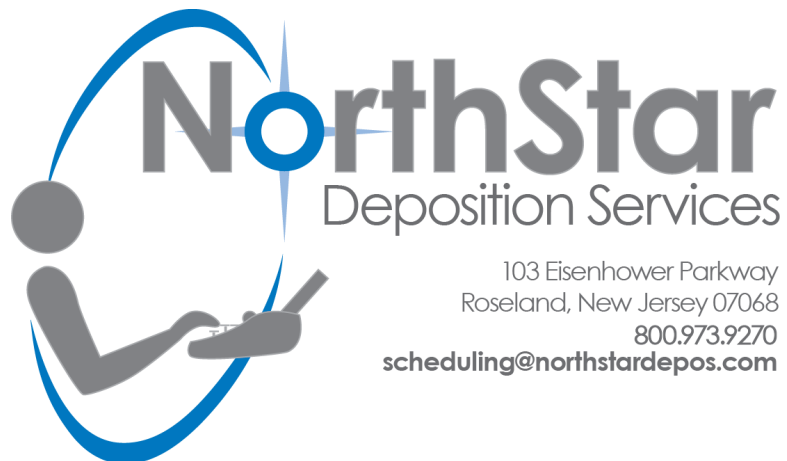
In The Matter Of:

Melita Meyer v.

Bebe Stores Inc.

Sheela Agarwal

January 08, 2016



Original File 010816Agarwal.TXT

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1 case -- let me know. I'm certainly probably -- I will
2 ask you a question that may not make sense to you.
3 **A. Okay.**
4 Q. Let me know that, and I'll try to
5 rephrase it.
6 **A. Okay.**
7 Q. I want to make sure that we're on the
8 same page today.
9 **A. Okay.**
10 **THE REPORTER:** And also, please, wait
11 until he's finished before you answer. I can't keep
12 hitting "okay" every time. I'm sorry.
13 **BY MR. MENDELSON:**
14 Q. I don't want to you guess at anything.
15 So if you don't know the answer to one of my
16 questions, just tell me you don't know. Okay?
17 **A. Okay.**
18 Q. By the same token, if I ask you a
19 date, a time, a number, and you can estimate or
20 approximate, you can go ahead and do so. Just let me
21 know that's what you're doing. Okay?
22 **A. Got it.**
23 Q. Did you review any documents in
24 preparation for the deposition today?
25 **A. Can you clarify -- if you're asking**

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1 **did I review documents today?**
2 Q. Before you came in here to start your
3 deposition, at any time, whether that was last week or
4 whether that was five minutes ago, did you review
5 documents in preparation for your -- to your testimony
6 today?
7 **A. Yes.**
8 Q. Can you tell me what documents you
9 reviewed?
10 **A. We reviewed -- I reviewed the notice,**
11 **I believe it's the deposition notice, and also our**
12 **internal IT documents.**
13 Q. And those internal IT documents, is it
14 your understanding that they've been produced to the
15 plaintiffs as part of the discovery process?
16 **A. Yes.**
17 Q. I see that you have a couple documents
18 in front of you there today.
19 **A. Yes. This was provided but may not**
20 **have been included; so they are printed out.**
21 **MS. PIERCE:** There's three copies
22 there, Counsel.
23 **MR. MENDELSON:** Three copies of --
24 **THE WITNESS:** The same --
25 **MS. PIERCE:** One can be marked, and it

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1 can be used by the witness, and then there's a copy
2 for each of you to look at while she's testifying.
3 **MR. LITTLEFIELD:** Thank you.
4 **MR. MENDELSON:** You know, why don't
5 we mark this. We're on Exhibit 9?
6 **MS. PIERCE:** Go ahead and have her
7 mark this copy. That way, we can --
8 **MR. MENDELSON:** Yeah. Can you pass
9 that to the court reporter, please, and have that
10 marked as Exhibit 9?
11 **MS. PIERCE:** I'd also like to note
12 that this is a confidential document. We just
13 realized this morning that we may not have produced
14 this, and we thought it would be helpful to have it
15 available to counsel for this particular deposition.
16 So we have provided a copy. It does not have a Bates
17 number on it, and it is not marked confidential, but
18 is it, in fact, confidential information.
19 (Exhibit 9 was marked for identification.)
20 **BY MR. MENDELSON:**
21 Q. So the court reporter has just handed
22 you what we've marked as Exhibit 9, which is a
23 four-page document that you brought to the deposition
24 today. Can you identify this document?
25 **A. Sure. This is the details of the**

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1 **scripting in the database, our CRM database.**
2 Q. And what does the scripting do?
3 **A. This takes the information from our**
4 **CRM database and sends it to the SMS vendor.**
5 Q. Okay. So this is the script
6 essentially pulling the cell phone numbers out of
7 Bebe's system and sending them to Air2Web?
8 **A. That's correct.**
9 Q. Okay. I believe some dot XML files
10 were produced in discovery that I thought were
11 scripts. Did you review those in preparation for your
12 deposition today?
13 **A. Not that I remember.**
14 Q. Okay. So other than -- and we'll go
15 through this in a little bit more detail later, but
16 other than the notice of deposition, the document we
17 just marked as Exhibit 9, and what you refer to as
18 internal IT documents, is there anything else that you
19 looked at?
20 **A. No.**
21 Q. When you say, "internal IT documents,"
22 can you give me an explanation of what you mean by
23 that?
24 **A. Sure. So I looked at our server**
25 **structure to get a picture of how many servers we**